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Supreme Court of the United States

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION
Appellant,

vs.

JOHN H. BLAISDELL, ET AL.,
Respondents.

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

BRIEF AND ARGUMENT OF VERNON A. VROOMAN AS AMICUS CURIAE

PRELIMINARY STATEMENT

The undersigned, appearing as *amicus curiae* in this case, makes no attempt, in this brief, to argue in opposition to any particular brief heretofore filed in the case. The fundamental question herein is, whether Chapter 339, Laws of 1933 of the State of Minnesota, providing for an extension

of the period in which lands may be redeemed from sales made under foreclosure of mortgages, and touching existing mortgages and also sales made prior to the enactment of the chapter, offends against the Constitution of the United States. The provisions of that chapter and the facts of the case are already before the court. With respect to the fundamental question, the undersigned begs leave to present to this court, without direct reference to the record of the case or to the briefs already filed herein, certain propositions which, as a result of his study of the Constitution, and of the decision made herein by the Supreme Court of Minnesota and reported in 249 N. W. at 334, and of many other decisions, he believes to be controlling on the question and determinative of the correct doctrine as to the relation between the federal constitution and the police power of a state.

This brief is submitted in the spirit and attitude which the Court of Appeals of the State of New York, speaking through Chief Judge Pound, expressed in a recent case, *People v. Nebbia*, 262 N. Y. 259, 186 N. E. 694, 699—— the spirit and attitude of "full respect for the Constitution as an efficient frame of government in peace and war, under normal conditions or in emergencies, with cheerful submission to the rule of the Supreme Court that legislative authority to abridge property rights and freedom of contract can be justified only by exceptional circumstances and, even then, by reasonable regulation only, * * *."

SUMMARY OF ARGUMENT.

I.

The statute, because of the degree to which and the manner in which it subserves the general welfare in a time of emergency, springs from a constitutional exercise of the police power.

A. The terms "general welfare," "public welfare" and "common welfare" are synonymous.

Stockton v. Williams (Mich. 1845), 1 Doug. 546, 570;
Kirkendall v. Omaha (1894), 39 Neb. 1, 57 N. W. 752, 754;
Spokane Traction Co. v. Granath (1906), 42 Wash. 506, 85 Pac. 261, 264;
Aymette v. State (1840), 2 Humph. (21 Tenn.) 154 158.

Many and diverse matters raise questions of general welfare.

Standard Oil Co. v. City of Bowling Green (1932), 244 Ky. 362, 50 S. W. (2d) 960, 961.

Economic matters raise such questions.

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

General welfare connotes the antithesis of an interest solely that of an individual or class.

See *Steele-Smith Dry Goods Co. v. Birmingham Ry., Light & Power Co.* (1916), 15 Ala. App. 271, 73 So. 215, 216.

And see: *Platt v. Craig* (1902), 66 Ohio 75, 63 N. E. 594, 595.

General welfare is the welfare of all who constitute a given community (e. g., a city, a State, the United States).

Chamberlain v. City of Burlington (1865), 19 Iowa 395, 403;
Cawker v. Meyer (1911), 147 Wis. 320, 133 N. W. 157, 159, 37 L. R. A. N. S. 510.

At least in certain connections a distinction has been taken between "general" and "universal," that being general which is merely extensive or widespread.

Koen v. State (1892), 35 Neb. 676, 53 N. W. 595, 596, 17 L. R. A. 821;
Puget Sound Pub. Co. v. Times Printing Co. (1903), 33 Wash. 551, 74 Pac. 802, 805;
Brooklyn Church Society v. Brooklyn Free Kindergarten Society, 152 N. Y. Supp. 41, 43;
New Standard Dictionary, p. 1018, defg. "general" as an adjective.

In a sense, however, general (public, common) welfare is in any view of the matter the welfare of all. That which is directly for the welfare of many may bring welfare indirectly to all others, so that, in the ultimate, the welfare of all is promoted. Individuals and classes find their *ultimate* welfare in the welfare of all.

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481.

And see: *Chicago, Burlington & Quincy Ry. Co. v. People* (1906), 200 U. S. 561, 593, 26 S. Ct. 341, 56 L. Ed. 596.

B. General welfare is the supreme aim of the constitution, as of all organic law. Promotion of the general welfare is the most general purpose stated in the preamble to the constitution. All other purposes stated in the preamble range under the one head, promotion of the general welfare.

A constitution must be construed "in the light of the purposes for which it was ordained."

Commonwealth v. City of Newport News (Va., 1932), 164 S. E. 689,696.

C. On a question of general welfare, the spirit rather than the letter of the constitution controls.

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481;
Packet Co. v. Keokuk (1877), 95 U. S. 80, 87, 24 L. Ed. 377.

D. The police power, like the constitution, has for its object the general welfare.

Noble State Bank v. Haskell (1910), 219 U. S. 104, 111, 31 S. Ct. 186, 55 L. Ed. 112, 32 L. R. A. N. S. 1062, Ann. Cas. 1912 A 487.

All proper objects of the police power range under the one head, promotion of the general welfare, and numerous definitions and characteristics of the power embrace the term "general welfare" in such manner as to make clear that the promotion of that welfare is the essential office of the power, and the foundation of every exercise thereof.

12 C. J., Constitutional Law, sec. 430.

And see:
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131, (United States Supreme Court decisions cited);
Cook County v. Chicago (1924), 311 Ill. 324, 142 N. E. 512, 516, 31 A. L. R. 442.

And the following recent cases:

Graham v. Kingwell (Cal.), 24 Pac. (2d) 488;
People v. Coulides, 265 N. Y. Supp. 765, citing *Baker v. Walker*, 204 U. S. 311, 27 S. Ct. 289, 51 L. Ed. 499.

E. It is a commoplace that "police power" is difficult of definition.

6 R. C. L., Constitutional Law, sec. 183.

Broadly considered, "police power" is synonymous with "sovereign power."

6 R. C. L., Constitutional Law, sec. 184;
12 R. C. L., Constitutional Law, sec. 415;
Citizens' Ins. Co. v. Hebert (1916), 139 La. 708, 717, 71 So. 955, 958.

The exercise of the police power is at least a manifestation of sovereign power.

Chicago, Burlington & Quincy Ry. Co. v. People (1905), 200 U. S. 561, 588, 26 S. Ct. 431, 56 L. Ed. 596;
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 38, 3 A. L. R. 1479;
McKeon v. New York, New Haven & Hartford Ry. Co. (1902), 75 Conn. 347, 53 Atl. 656, 657, 61 L. R. A. 730, quoting from *The License Cases,* 5 How. (46 U. S.) 504, 583, 12 L. Ed. 256;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 843, A. L. R. 131;
City of Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419.

Less broadly considered, police power is sovereign power as exercised to meet some great public need.

Noble State Bank v. Haskell (1910), 219 U. S. 104, 111, 31 S. Ct. 186, 55 L. Ed. 112, 32 L. R. A. N. S. 1062, Ann. Cas. 1912 A 487.

Thus it is "society's natural right of self defense."

McGuire v. Chicago, Burlington & Quincy Ry. Co. (1906), 131 Iowa 340, 354, 108 N. W. 902, 907.

And see:

12 C. J., Constitutional Law, sec. 415, and f. n. 13;
Barret v. Rickard (1910), 76 Neb. 769, 124 N. W. 153, 155-6;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

F. As to the relation between the police power and the

letter of the constitution, a balance-of-welfare theory seems to be developing.

The process of inclusion and exclusion is gradually making out the boundaries of the power.

6 R. C. L., Constitutional Law, sec. 185;
Noble State Bank v. Haskell, supra, (219 U. S. 104, 111).

The question whether legislation contravening the letter of the constitution is unconstitutional involves, among other things, the *degree* to which the legislation promotes the general welfare.

Pennsylvania Coal Co. v. Mahon, supra, (260 U. S. 393, 416).

G. The state may balance its police power against the letter of the federal constitution.

The police power is inherently the state's.

12 C. J., Constitutional Law, sec. 417;
2 Cooley, Constitutional Limitations (8th ed.), p. 1232.

The federal constitution has not deprived the state of the power.

Brown v. Maryland (1827), 12 Wheat. (25 U. S.) 419, 443;
Boston Beer Co. v. Massachusetts (1877), 97 U. S. 25, 33, 24 L. Ed. 989;
State v. Schlenker (1900), 112 Iowa 642, bot. 649, 84 N. W. 698, 699, 51 L. R. A. 347, 84 Am. St. Rep. 360;
State v. Fitzpatrick (1888), 16 R. I. 54, 11 Atl. 767, 769;
City of Rochester v. West (1898), 29 App. Div. 125, 51 N. Y. Supp. 482, 484;
City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 77, 78, 53 L. R. A. 442.

Re the contract clause of the federal constitution.

Burdick, The Law of the American Constitution, secs. 196 and 197.

Re the due process and the equal protection clause.

2 Cooley, Constitutional Limitations (8th ed.), p. 1234, f. n.

H. Changes in conditions, whether gradual or sudden, may render promotive of general welfare, and constitutional, measures that formerly would not have been so.

Block v. Hirsch (1921), 256 U. S. 135, 155, 41 S. Ct. 458, 65 L. Ed. 865, 16 A. L. R. 165;
Edgar A. Levy Leasing Co. v. Siegel (1922), 258 U. S. 242, 246, 42 S. Ct. 289, 66 L. Ed. 595;
6 R. C. L., Constitutional Law, sec. 188;
Martin v. Hunter (1816), 1 Wheat. (14 U. S.) 304, 326;
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 545, 213 N. W. 835, 838;
City of Aurora v. Burns, 319 Ill. 84, 149 N. E. 784, 788;
Streich v. Board of Education (1914), 34 S. D. 169, 147 N. W. 779, 781, Ann. Cas. 1917 A. 760;
People v. Nebbia (1933), 262 N. Y. 259, 186 N. E. 694, 699.

I. An economic depression may constitute or comprise such an emergency as justifies an unusual exercise of the police power.

General welfare embraces economic welfare.

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 10, 147 N. W. 195, 199, L. R. A. 1917 B. 1918;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

Various definitions of police power refer to "prosperity," "economic welfare," "economic concern," etc.

Bankers' Trust Co. v. Russell (Mich.) 249 N. W. 27, 29 (United States Supreme Court decisions cited.)

Promotion of such objects is frequently stated to be among the reasons for the exercise of the power.

Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 592);
Noble State Bank v. Haskell, supra, (219 U. S. 104, 111);
Bacon v. Walker, 204 U. S. 311, 318, 51 L. Ed. 499, 27 S. Ct. 291;
Barbier v. Connolly (1885), 113 U. S. 27, 31, 5 S. Ct. 357, 28 L. Ed. 923;
Women's Kansas City St. Andrew Society v. Kansas City (1932), 58 F (2d) 593, 599;
City of Des Moines v. Manhattan Oil Co. (1922), 193 Iowa 1096, bet. 1104, 184 N. W. 823, 23 A. L. R. 1322;
People v. LaFetra (1921), 230 N. Y. 429, 130 N. E. 601, 606;
Stetter v. O'Hare (1914), 69 Ore. 519, 531, 139 Pac. 743, 747, Ann. Cas. 1916 A 217, 222;
State v. Pitney (1914), 79 Wash. 608, 140 Pac. 918, 919, Ann. Cas. 1916 A, 209;
Ex parte Townsend (1911), 64 Tex. Cr. 350, 144 S. W. 628, 631, 33 Ann. Cas. 1914 C 814, 817;
State v. Mamlock (1910), 58 Wash. 631, 633, 109 Pac. 47, 137 Am. St. Rep. 1085;
Morrison v. State (1906), 116 Tenn. 534, 543, 95 S. W. 494, 496;
Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 482;
Thorpe v. Rutland & Burlington Rd. Co. (1854), 27 Vt. 140, 149, 62 Am. Doc. 625, 633.

J. The statute is not, and does not profess to be, a cure for the depression or any phase of the depression, but merely a means of ameliorating, during the economic emergency, a certain condition fraught with public detriment and danger.

It is to be noted, too, that the statute is a legislative exercise of a legislative power, and not in any sense or degree an abdication of such power.

K. The police power is older than any constitution, and although it has never remained entirely unused in this country, the exercise of the power has become more and more frequent and varied during the past generation.

City of Rochester v. West (1898), 51 N. Y. Supp. 482, 484;
Brown v. Maryland, 12 Wheat. (25 U. S.) 419, 443;
1 Warren, The Supreme Court in United States History, p. 695, f. n. 2;
Munn v. Illinois, 94 U. S. 113, 125, 24 L. Ed. 77;
People v. Nebbia (1933), 262 N. Y. 259, 186 N. E. 694, 698;
Leonard v. State (1919), 100 Ohio St. 456, 127 N. E. 464, 465;
City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 70, 78, 53 L. R. A. 542;
Chicago, Milwaukee & St. Paul Ry. Co. v. City of Milwaukee (1897), 97 Wis. 422, 72 N. W. 1118, 1123;
Burdick, The Law of the American Constitution, secs. 196 and 197;
2 Warren, The Supreme Court in United States History, p. 735 et seq., esp. 740-42.

II.

Certain matters which the courts judicially notice, certain presumptions with which they surround legislation, and the general attitude which judicial tribunals take toward legislation, all tend to support the act.

A. The court knows that a grave economic emergency exists.

The courts judicially notice matters of common knowledge.
23 C. J., Evidence, sec. 1810.

This court has heretofore judicially taken notice of an emergency.

Block v. Hirsch, supra, (256 U. S. 135, 154);
Chastleton Corp. v. Sinclair (1924) 264 U. S. 543, 547, 68 L. Ed. 841, 44 S. Ct. 405.

This court knows that on March 6, 1933 the President proclaimed the existence of an economic emergency.

23 C. J., Evidence, sec. 1900.

The Federal Emergency Relief Act, the Agricultural Adjustment Act, the National Industrial Recovery Act, and the Emergency Railroad Transportation Act, have apprised this court of the existence of an emergency.

23 C. J., Evidence, sec. 1947.

The court must take judicial notice of statements in the Congressional Record concerning the economic depression.

23 C. J., Evidence, sec. 1934, and foot notes, particularly fn. 95 (a, 4).

This court knows of the existence of a public exigency in Minnesota in connection with foreclosures of real estate mortgages.

Block v. Hirsch, supra, (256 U. S. 135, 154);
Chastleton Corp. v. Sinclair, supra (264 U. S. 543, 547);
Union Dry Goods Co. v. Georgia Public Service Corp., 248 U. S. 372, 39 S. Ct. 117, 9 A. L. R. 1420;
State v. Moeller, 249 N. W. 330.

B. There is an almost overwhelming presumption that an act of Congress or a State Legislature is constitutional.

Third Dec. Dig., Constitutional Law, sec. 48;
12 C. J., Constitutional Law, secs. 221 and 222;
McCabe v. Atchison, etc., Ry. Co. (1911), 186 Fed. 966; affd. 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69;
Eckerson v. Des Moines (1908), 137 Iowa 452, 115 N. W. 177;
Hunter v. Colfax Consol. Coal Co. (1916), 175 Iowa 245, 154 N. W. 1037, L. R. A. 1917 D, 15, Ann. Cas. 1917 E, 803;
Nolen v. Riechman (1915), 225 Fed. 812;
Younker v. Susong (1916), 173 Iowa 663, 156 N. W. 24;

Waugh v. Shirer (Iowa), 249 N. W. 430, 435;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Dyer (Fla.), 143 So. 201, 203;
State v. Prevatt (Fla.), 148 So. 578, 579;
Wayne Township v. Brown (Ind.), 186 N. E. 841, 847;
Chassanoil v. City of Greenwood (Miss.)), 114 So. 781, 783;
Rider v. Cooney (Mont.), 23 Pac. (2d), 261;
State v. Hall (Neb.), 249 N. W. 756, 758-9;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
Commonwealth v. Great American Indemnity Co. (Pa.), 167 Atl. 793, 797-8;
Utah Mfrs. Ass'n v. Stewart (Utah), 23 Pac. (2d) 229, 232;
Richmond Linen Supply Co. v. City of Lynchburg (Va.), 169 S. E. 554;
Aetna Ins. Co. v. Commonwealth (Va.), 169 S. E. 859, 864;
Mason v. City of Seattle (Wash.), 24 Pac. (2d) 91, 92;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

C. The court is not concerned with the motives of a State Legislature any more than with those of Congress.

United States v. Des Moines Navigation & Ry. Co. (1891), 142 U. S. 510, 544, 12 S. Ct. 308, 35 L. Ed. 1099;
12 C. J., Constitutional Law, sec. 224;
Third Dec. Dig., Constitutional Law, sec. 70 (3);
Smith v. Kansas City Title & Trust Co. (1921), 255 U. S. 180, 210, 41 S. Ct. 243, 65 L. Ed. 577;
Hamilton v. Kentucky Distilleries Co. (1919), 251 U. S. 146, 161, 40 S. Ct. 106, 64 L. Ed. 194;
Appalachian Elec. Power Co. v. Smith (D. C., W. Va.) 4 Fed. Supp. 6, 22;
Blanchard v. City of New York, 262 N. Y. 5, 186 N. E. 29, 32.

D. The court is not concerned with the wisdom or policy of legislation.

Third Dec. Dig., Constitutional Law, sec. 70 (3);

National Union Fire Ins. Co. v. Warburg (1922), 260 U. S. 71 (see 77), 43 S. Ct. 32, 67 L. Ed. 314;
United States v. Lanza (1922), 260 U. S. 377 (see 385) 43 S. Ct. 141, 67 L. Ed. 314;
Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161);
Block v. Hirsch, supra, (256 U. S. 135, 138);
Union Dry Goods Co. v. Georgia Public Service Corp., supra, (248 U. S. 372, 374);
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 588).

Recent cases:

Williams v. Mayor, 53 S. Ct. 431, 433;
Wonder Bakeries Co., Inc. v. White, 3 F. Supp. 311;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Dyer (Fla.), 143 So. 201, 203-4;
Mississippi State Tax Commission v. Flora Drug Co. (Miss.), 148 So. 373, 377;
Little v. American State Bank (Mich.), 249 N. W. 22, 23;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
McPherson v. Fisher (Ore.), 23 Pac. (2d) 913, 914;
State v. Morrison (S. Dak.), 249 N. W. 563, 565;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

E. The legislature is the first judge of what is for the greatest good of the greatest number, and so for the true ultimate good of all.

Missouri, Kansas & Texas Ry. Co. v. May (1904), 194 U. S. 267, 270, 24 S. Ct. 638, 48 L. Ed. 971;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

F. Before the court can overturn the act, the court must find that the legislature made a mistake as to whether there is any basis in fact for a finding that the public welfare is jeopardized, else a mistake as to whether there is any

reasonable connection between the provisions of the act and the thing which jeopardizes that welfare.

American Coal Mining Co. v. Special Coal & Food Commission (1920), 268 Fed. 563; (1921) appeal dismissed, 258 U. S. 632, 66 L. Ed. 801, 42 S. Ct. 273.

And see:

State v. Harper (1923), 182 Wis. 148, 196 N. W. 451, 453, 33 A. L. R. 269;
State v. Coulides, 265 N. Y. Supp. 765, 768, (recent case).

A legislature is presumed to have passed an act with full knowledge of existing conditions and to have found the facts on which its power to act must be predicated.

12 C. J., Constitutional Law, secs. 222 and 225;
United States v. Des Moines Navigation & Ry. Co., *supra*, (142 U. S. 510, 544);
State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 147 N. W. 195, L. R. A. 1917 B, 198; (1916) affd. 242 U. S. 153, 37 S. Ct. 28, 61 L. Ed. 217;
Hutchens v. Jackson (N. Mex.), 23 Pac. (2d) 355, (recent case);
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421, (recent case).

It seems the presumption is fortified where a basis in fact for the legislation obviously exists, as where the existence of the basis is a matter of judicial knowledge, and that where there is reasonable doubt whether such basis exists the presumption controls.

Zahn v. Bd. of Public Works (1925), 274 U. S. 325, 328, 47 S. Ct. 594, 71 L. Ed. 1074;
The Chastleton Corp. v. Sinclair, supra, (264 U. S. 543, 547);
People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 604;

Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421, (recent case).

Legislation "necessary for the public welfare" is legislation that has such a basis.

State v. Redmon (1907), 134 Wis. 89, 114, N. W. 137, 126 Am. St. Rep. 1003, 14 L. R. A. N. S. 229, 15 Ann. Cas. 408.

And see:

Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419, 15 Ann. Cas. 408.

The only other requirement is that the legislation shall amount to some reasonable way of meeting the detriment or danger which the situation unfolds.

Third Dec. Dig., Constitutional Law, sec. 70 (3) (see p. 557);
Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 592);
Block v. Hirsch, supra, (256 U. S. 135, 158);
City of Aurora v. Burns, 319 Ill. 84, 149 N. E. 784, 787;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 134;
State v. Harper (1923), 182 Wis. 148, 196 N. W. 451, 452-3, 33 A. L. R. 269.

G. Relative to matters of general welfare, a legislature has a wide discretion.

Manigault v. Springs (1905), 199 U. S. 473, 480, 26 S. Ct. 127, 50 L. Ed. 274;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 134.

H. "A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

Block v. Hirsch, supra, (256 U. S. 135, 157).

And see:

The Chastleton Corp. v. Sinclair, supra, (264 U. S. 543, 547).

But emergency legislation may extend sufficiently beyond the emergency to guard against its after effects.

Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161).

I. It does not devolve upon appellees to show that the statute is constitutional, but upon appellant to show, if possible, that it is not.

12 C. J., Constitutional Law, sec. 221;
Third Dec. Dig., Constitutional Law, sec. 48 (see p. 473);
People v. City Prison Warden, 154 App. Div. 413, 139 N. Y. Supp. 277, 286.

Recent cases in point:

Williams v. Mayor, 53 S. Ct. 431, 433;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Prevatt (Fla.), 148 So. 578, 579;
McPherson v. Fisher (Ore.), 23 Pac. (2d) 913.

III.

The statute is not repugnant to the contract clause of Section 10 of Article 1 of the Constitution of the United States.

A. The letter of the clause sometimes yields to considerations of general welfare.

Pennsylvania Hospital v. Philadelphia (1917), 245 U. S. 20, 23, 38 S. Ct. 35, 62 L. Ed. 124;
Union Dry Goods Co. v. Georgia Public Service Corp., supra, (248 U. S. 372, 377);
2 Cooley, Constitutional Limitations (8th ed.), p. 1237;

Third Dec. Dig., Constitutional Law, sec. 117.

B. Contracts are inherently subject to yielding to the exercise of the police power.

Third Dec. Dig., Constitutional Law, sec. 117;
12 C. J., Constitutional Law, sec. 603;
2 Cooley, Constitutional Limitations (8th ed.), p. 1237;
Edgar A. Levy Leasing Co., supra, (258 U. S. 242, 249);
Marcus Brown Holding Co. v. Feldman (1921), 256 U. S. 170, 198, 41 S. Ct. 465, 65 L. Ed. 877;
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558);
City of Butte v. Roberts (Mont.), 23 Pac. (2d) 342, (recent case).

C. Otherwise, individuals could control the police power and defeat the general welfare.

Manigault v. Springs, supra, (199 U. S. 473, 480);
12 C. J., Constitutional Law, sec. 603;
Raymond Lumber Co. v. Raymond Light, etc., Co. (1916)), 92 Wash. 330, 159 Pac. 133, 136, L. R. A. 1917 C. 574.

D. The sanctity of contracts does not protect them from the exercise of the power. The sacredness of contractual obligations was not the reason for incorporating the clause into the constitution. The reason probably was, to discourage repudiation of debts by the states.

E. If a sheriff's certificate of sale evidences a contract between him or the state and a purchaser at an execution sale, the obligation of that contract, like the obligation of any other contract, is secondary to the matter of public welfare, which is the primary concern of all law.

F. Whether a legislative act validly impairs the obligation of contract does not depend upon whether the act

alters the substantive or alters the adjective law pertaining to contract.

Block v. Hirsch, supra, (256 U. S. 135, 158);
Chadwick v. Moore (Pa., 1844), 8 Watts & Sergeant 49.

G. If under the police power the legislature can interfere with the remedy, the legislature can so interfere at any stage of the remedy. It would be anomalous if general welfare were the paramount consideration at one point but not at another.

H. Cases like *Bronson v. Kinzie* (1843), 42 U. S. (1 How.) 311, 11 L. Ed. 143; *Barnitz v. Beverly* (1895), 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93; etc., etc., containing hardly an intimation about police power or emergency legislation, are of no value on the question whether the adjective as well as the substantive law shall not yield to the police power and the exigencies of public welfare.

It is not without reason that in a recent case, *Addis v. Selig,* 264 N. Y. Supp. 816 (see top of 824), consideration of the police power is eliminated from an opinion in which *Bronzon v. Kinzie, supra,* is discussed.

If cases, state or federal, like *Bronson v. Kinzie,* and *Barnitz v. Beverly,* may by any remote possibility be regarded as emergency or police-power cases, they must yield to principles announced in later decisions of this court.

IV.

The statute is not repugnant to the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. The letter of the due process clause yields to considerations of general welfare.

Third Dec. Dig., Constitutional Law, sec. 253;
12 C. J., Constitutional Law, sec. 962, citing numerous United States Supreme Court and other decisions;
3 Words and Phrases, p. 2253;
Edgar A. Levy Leasing Co. v. Siegel, supra, (258 U. S. 242, 247);
Marcus Brown Holding Co. v. Feldman, supra, 256 U. S. 170;
Union Dry Goods Co. v. Georgia Public Service Corp., supra, (232 U. S. 548, 588);
People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 605-6;
Chapman v. Boynton, 4 Fed. Supp. 43, 46 (recent case), citing several United States Supreme Court decisions;
Graham v. Kingwell (Cal.), 24 Pac. (2d) 488, 489, recent case).

B. All property is held subject to the possibility that under the police power it may be taken notwithstanding the due process clause. Every contract or property right, whether vested or not, is inherently subject to the possibility.

12 C. J., Constitutional Law, sec. 962;
Atlantic Coast Line Rd. Co. v. Goldsboro, (232 U. S. 548);
Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 588);
Mugler v. Kansas (1887), 123 U. S. 623, 8 S. Ct. 273, 31 L. Ed. 205;
Hubbell v. Higgins (1910), 148 Iowa 36, 126 N. W. 914, Ann. Cas. 1912 B, 822;
Martin v. Blattner (1886), 68 Iowa 286, 289, 25 N. W. 131, 133, 135, 27 N. W. 244;
City of Butte v. Roberts (Mont.), 23 Pac. (2d) 342.

C. So far-reaching is the police power in its relation to the due process clause that notwithstanding this clause a

person may, under the power, be deprived of property without compensation.

Edgar A. Levy Leasing Co. v. Siegel, supra, (258 U. S. 242, 247);
Block v. Hirsch, supra, (256 U. S. 135, 156);
Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146);
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558).

D. Cases like *Bottdorf v. Lewis* (1903), 121 Iowa 27, 95 N. W. 26, and *Edworthy v. Iowa Savings & Loan Assn.* (1901), 114 Iowa 220, 86 N. W. 315, which are not police-power or emergency-situation cases, are of no value on the question whether vested or property rights are not as subject as any other rights to yield to the police power, in time of emergency, upon considerations of public welfare.

E. The statute must be balanced, in point of general welfare, against the letter of the due process clause, and the question answered whether the statute manifests a merely arbitrary attempt to supervene the letter.

Purity Extract and Tonic Co. v. Lynch (1912), 226 U. S. 192, 204, 33 S. Ct. 44, 57 L. Ed. 184;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

F. Although the legislature could, under the police power, for the public benefit, deprive appellant and others of property without due process of law, the legislature has not deprived appellant of anything whatsoever without such process.

Evidently appellant has had a hearing upon proper notice, with notice and hearing according to the laws applicable to other like cases within the purview of the statute,

and with the same laws applied to the facts of the case as are applicable to the facts of all other like cases, and with these laws applied in the same manner in which they are applicable to all other cases like the case at bar.

H. A redemption law is "favorable to the rights of property."

Gault's Appeal (1859), 33 Pa. 94, 98;
Caro v. Wollenberg (1913), 68 Ore. 420, 136 Pac. 866, 869.

V.

The statute is not repugnant to the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. The equal protection clause yields to considerations of general welfare.

Third Dec. Dig.; Constitutional Law, secs. 117 and 212;
12 C. J., Constitutional Law, sec. 894;
Barbier v. Connolly, supra, 113 U. S. 27, 31;
Fisher Flouring Mills Co. v. Brown (1924), 109 Wash. 680, 187 Pac. 399, 403.

B. But the statute is *not* class legislation.

There is neither unjust discrimination nor the denial of equal protection in a statute applicable to all alike who are in the same situation or the same natural classification.

Barbier v. Connolly, supra, (113 U. S. 27, 32);
Town of Green River v. Fuller Brush Co., 65 F (2d) 112, 114-5, (recent case), citing several decisions of the Supreme Court of the United States;
State v. Darling (Iowa), 246 N. W. 390 (recent case).

C. Reasonable classification has never been held unconstitutional.

Third Dec. Dig., Constitutional Law, sec. 48 (see p. 474);
Little v. American State Bank (Mich.), 249 N. W. 22, 23, (recent case).

The legislature has wide discretion to make a classification on any reasonable basis. The existence, at the time of a legislative enactment, of any conceivable reasonable basis for the classification must be assumed and the burden of showing that no such basis then existed is upon whoever assails the classification as arbitrary.

Lindsley v. Natural Carbonic Gas Co. (1911), 220 U. S. 61, 78, 55 L. Ed. 369, 31 S. Ct. 337, Ann. Cas. 1912 C, 160;
Wayne Township v. Brown (Ind.), 186 N. E. 841, 850, (recent case);
State v. Superior Court (Wash.), 24 Pac. (2d) 87, 88.

D. If, in behalf of the general welfare, legislation touches a certain field, the legislation need not cover the whole field in order not to offend against the equal protection clause.

Cooley, Constitutional Limitations (8th ed.), p. 1231;
Farmers and Merchants Bank v. Federal Reserve Bank (1923), 262 U. S. 649, 661, 43 S. Ct. 651, 67 L. Ed. 1157, 30 A. L. R. 635;
Zucht v. King (1922), 260 U. S. 174, 177, 43 S. Ct. 24, 67 L. Ed. 194;
City of New Orleans v. LeBlanc (1920), 139 La. 113, 71 So. 248;
State v. Winehill & Rosenthal (1920), 147 La. 781, 86 So. 181; (1922), 258 U. S. 605, 66 L. Ed. 786, 42 S. Ct. 313, writ of error dismissed);
West v. City of Asbury, 89 N. J. Law 402; 99 Atl. 190;
Hughes v. City of Detroit (1922), 217 Mich. 567, 187 N. W. 530;
Miller v. City of Niagara Falls (1924), 202 N. Y. Supp. 594, 207 App. Div. 798.

E. A fact that may not be without some significance is, that in many cases in which the constitutionality of legislation similar to that here involved has been drawn into question, the claim that such legislation impairs the obligation of contract has frequently been made, and likewise the claim that it denies due process of law, but seldom the claim that it denies the equal protection of the law.

Cases like *State v. Loomis* (1893), 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789, and *Vanzant v. Waddel* (1829), 10 Tenn. (2 Yerg.) 259, in which emergency legislation is not involved or in which the police power receives little or no consideration, have little force in connection with the question whether Chapter 389, Laws of 1933 of Minnesota, is class legislation, denying to any person or persons the equal protection of the laws.

F. The legislature is the first judge of whether a classification is reasonable. The legislature has a wide discretion in the matter of classification.

Lindsley v. Natural Carbonic Gas. Co., supra, (220 U. S. 61, 78);

Recent case: *State v. Darling* (Iowa), 246 N. W. 390.

It would seem, also, that where the legislature is striving to meet an emergency, the bounds of its discretion enlarge; the greater the emergency, the wider the discretion.

It has even been said that special legislation is permissible when "designed to meet a temporary emergency in a particular locality or in regard to a particular person, * * *."

Platt v. Craig (1902), 66 Ohio St. 75, 63 N. E. 594, 596.

ARGUMENT.

I.

The statute, because of the degree to which and the manner in which it subserves the general welfare in a time of emergency, springs from a constitutional exercise of the police power.

A. General (public, common) welfare embraces every matter which, with respect to any interest, whatever it may be (e. g., any social, political or economic interest), involves the welfare of all who constitute a given community (e. g., a city, a State, the United States).

The terms "general welfare," "public welfare" and "common welfare" are synonymous.

Stockton v. Williams (Mich., 1845), 1 Doug. 546, 570;
Kirkendall v. Omaha (1894), 39 Neb. 1, 57 N. W. 752, 754;
Spokane Traction Co. v. Granath (1906), 42 Wash. 506, 85 Pac. 261, 264;
Aymette v. State (1840), 2 Humph. (21 Tenn.) 154, 158.

The term "general welfare," with regard to the number and diversity of the matters it may concern, is a term of the broadest import.

Standard Oil Co. v. City of Bowling Green (1932), 244 Ky. 362, 50 S. W. (2d) 960, 961.

> "The public welfare embraces a variety of interests calling for public care and control. These are: 'The primary social interests of safety, order and morals; economic interests; and non-material and political interests. Freund Police Power, secs. 9, 15'."

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 10, 147 N. W. 195, 199, L. R. A. 1917 B, 1918.

"As our civic life has developed, so has the definition of 'public welfare,' until it has been held to embrace regulations to promote the economic welfare, public convenience and general prosperity of the community."

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

Not only is the term of broad import with regard to the number and diversity of the matters it may concern, including economic interest or welfare, but also with regard to the number of individuals and classes it concerns. It connotes the antithesis of the special or private interest of an individual or class.

See *Steele-Smith Dry Goods Co. v. Birmingham Ry., Light & Power Co.* (1916), 15 Ala. App. 271, 73 So. 215, 216.

And see: *Platt v. Craig* (1902), 66 Ohio 75, 63 N. E. 594, 595.

"Mr. Webster says that 'in *general, public* expresses something common to mankind at large, to a nation, state, city or town, and is opposed to PRIVATE, which denotes what belongs to an individual, to a family, to a company, or a corporation'."

Chamberlain v. City of Burlington (1865), 19 Iowa 395, 403.

"The Century Dictionary defines it [public] as: 'Of or belonging to the people at large; relating to or affecting the whole people of a state, nation or community; not limited or restricted to any particular class of the community.' The New International defines it as: 'Of or pertaining to the people; relating to or affecting a nation, state or community at large'."

Cawker v. Meyer (1911), 147 Wis. 320, 133 N. W. 157, 159, 37 L. R. A. N. S. 510.

At least in certain connections, a distinction has been taken between "general" and "universal."

Koen v. State (1892), 35 Neb. 676, 63 N. W. 595, 596, 17 L. R. A. 821;
Puget Sound Pub. Co. v. Times Printing Co. (1903), 33 Wash. 551, 74 Pac. 802, 805;
Brooklyn Church Society v. Brooklyn Free Kindergarten Society, 152 N. Y. Supp. 41, 43;
New Standard Dictionary, p. 1018, defining "general" as an adjective.

If the distinction between "general" and "universal" be good in connection with the term "general welfare," possibly the general welfare is less than the welfare of all the members of a community; possibly such welfare is but that of many or the greatest number—merely a welfare extensive or widespread.

In a sense, however, general (public, common) welfare is in any view of the matter the welfare of all. That which is directly for the welfare of many may bring welfare indirectly to all others, so that, in the ultimate, the welfare of all is promoted. Individuals and classes find their greatest *ultimate* welfare in the welfare of all.

> "Judge Dillon, in his work on Municipal Corporations, (volume 1, p. 212), says * * * 'If one suffers injury, it is either *damnum absque injuria*, or in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure'."

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481.

And see *Chicago, Burlington & Quincy Ry. Co. v. People* (1906), 200 U. S. 561, 593, 26 S. Ct. 341, 56 L. Ed. 596.

So, even if the recipients of the *direct* benefit of an act be a class, if the object of the act is to benefit, not the class, but

the public at large (individuals and classes generally), the object is general welfare. If an act confers a direct benefit upon debtors as a class or upon a certain class of debtors, not for the sake of the debtors but for the sake of the public, the act is an act to promote the general welfare. There is a decided difference between legislation which has for its sole object the benefit of a class and legislation which benefits a class with a view to achieving the ultimate benefit of the public—between class benefit as an end in itself and class benefit as a means to a public end.

B. The supreme aim of the federal constitution is the general welfare of the people of the United States.

It would seem that any political act, from the ordination of a constitution down to the enactment of a municipal ordinance, should have as its object the welfare of the community to be affected by it—the general welfare of the nation, the general welfare of a State of the United States, the general welfare of county or township, city or village.

That the general welfare of the people of the United States is the object of the Constitution of the United States is attested by the constitution itself. The preamble to the constitution is as follows: "We the people of the United States, in order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Promotion of the general welfare is the most general purpose stated in the preamble. Indeed, the purpose is so general that all the other purposes stated in the preamble can be placed under the one head, promotion of the general welfare. It is easy to see that the preamble would contain no more than it does, in substance and effect, if it were simply this: "We the people of the United States, in order to pro-

mote the general welfare, do ordain and establish this Constitution for the United States of America."

The inclusion, in the preamble, of a general welfare clause, indicates that by and under the constitution the general welfare is to be promoted, not only in the several certain ways (instance establishing justice and insuring domestic tranquility) mentioned in the preamble, but in other ways as well.

It stands to reason that the general welfare is the primary object of the constitution, because the general welfare is the primary object of all positive law. It is simply a matter of public policy that we have law at all, and what reason of public policy there could be, for our having law, unless the reason be that the public welfare can be promoted through law, it is impossible to perceive.

Even the socalled "private acts" of legislatures are not without a measure of public importance, not without a relation, however tenuous and remote, to the general welfare. Were it not so, what possible excuse could there be for them, in a country whose government is supposed to proceed, in fact as well as theory, from the people, and to be *for* the people.

The difference between a private act and a public act, in point of service to the general welfare, is one of degree, as is likwise the difference between one public act and another, and if a given public act be specifically denominated an act for the public welfare, such act is so denominated merely because it is more obviously and immediately in the interest of that welfare than are most other public acts.

Even when on its face an act is in aid of an individual only, and is actually denominated a *private* act, it has—in order to be justified it *must* have—some certain, even though relatively remote, public significance. Where, in point of public significance, is the dividing line between an act for

the relief of John Doe and an act for the relief of a great mass of people? Perhaps no one can trace the line with precision. However, it suffices, for practical purposes, that we can sense the difference between the private and the public act. The latter is certainly *more* for the public welfare than is the former. And just as there is a difference of degree between the private and the public act, so there is a difference of degree between one public act and another, in point of the promotion of the public welfare.

In the prevailing opinion in *Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, 413, 43 S. Ct. 158, 67 L. Ed. 322, we find the following passage:

> This is the case of a single private house. No doubt there is a public interest even in this, as there is in every purchase and sale and in all that happens within the commonwealth. Some existing rights may be modified even in such a case. *Rideout v. Knox,* 148 Mass. 368. But usually in ordinary affairs the public interest does not warrant much of this kind of interference. A source of damage to such a house is not a public nuisance even if similar damage is inflicted on others in different places. The damage is not common or public. *Wesson v. Washburn Iron Co.,* 13 Allen, 95, 103."

That "usually in ordinary affairs the public interest does not warrant much of this kind of interference" can never be gainsaid. In *Pennsylvania Coal Co. v. Mahon,* the court divided over whether considerations of general welfare warranted the statute involved in that case. The majority of the court did not think so; Mr. Justice Brandeis did. He thought the statute necessary to protect the public from detriment and danger—that is to say, to promote the general welfare. In view of the public detriment and danger involved in the present real estate mortgage situation, the statute under consideration in the case at bar is not the outgrowth of any of those "ordinary affairs" alluded to in

Pennsylvania Coal Co. v. Mahon. It is the outgrowth of affairs warranting some of "this kind of interference." It is not to be numbered among ordinary public acts. It is in such degree in the interest of public welfare that, although all laws are in theory for that welfare, this particular statute should be specifically denominated a public-welfare statute. It is not only in theory for the public welfare, but is especially so in fact.

The preamble plays no part in the construction of the framework of the federal government, nor does the preamble play any part—at least, it plays no direct part—in endowing any branch of the federal government with any of the powers possessed by that particular branch. However, the preamble can not be taken as an indulgence in beautiful but idle phraseology. It points to the purpose and object, basic and supreme, of the federal organic law—the general welfare of the people of the United States. Of this people the people of every State are a part; this welfare the welfare of the people of every State affects. And a constitution, as said in *Commonwealth v. City of Newport News* (Va., 1932), 164 S. E. 689, 696, must be construed "in the light of the purposes for which it was ordained"—the general, public, or common welfare.

C. When by a legislative act which contravenes the letter of a constitution the general welfare can be better promoted than by a strict observance of that letter, the act must prevail, else the constitution is a self-defeating instrument, and the organic law fails of the supreme object for which it was ordained.

To concede that the statute impairs the obligation of contracts would not be to concede that it violates Section 10 of Article I of the Constitution of the United States: "No state shall * * * pass any * * * law impairing the obligation of contracts * * * ."

To concede that the statute calls for any procedure such as does not constitute due process of law, would not be to concede that it violates Section I of the Fourteenth Amendment to the Constitution of the United States: "* * * nor shall any State deprive any person of * * * property, without due process of law * * *."

To concede that the statute withholds from any one the equal protection of the laws would not be to concede that it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States: "nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

It is erroneous to assume that any legislative act which impairs the obligation of contracts or trenches upon due process or savors of class legislation is a violation of the organic law. Whether such act is violative of one or more of the clauses above quoted depends, fundamentally, upon how the clauses are to be regarded and applied. Shall they be interpreted strictly—interpreted according to their very letter? Or shall they be construed liberally—construed in the light of the needs of society and the general purpose and object of a constitution? Shall they be strictly applied, without regard to whether adherence to their letter helps or hinders general welfare? Or liberally, with an eye to promoting that welfare?

If all the clauses of a constitution are always to be taken literally and applied strictly, no legislative act which is in *literal* conflict with any of them can by any possibility be constitutional. If, however, the clauses receive *liberal* construction and application, the question whether a given legislative act contravenes one or more of them must depend upon the degree to which the act will serve the purpose and object of the constitution. If the clause is to be construed according to the *spirit* of the constitution as a whole,

and so applied as always to further, never defeat, the basic and ultimate object of the organic law, certain legislative acts may impair the obligation of contracts or deprive a person of property without due process of law or deny to one the equal protection of the laws, and yet not contravene the constitution. In other words, some impairments of the obligation of contracts may be constitutional, others not. And so as to denials of due process or withholdings of equal protection.

In this brief such expressions as "repugnant to," "violative of," "in violation of," "in contravention to," "violates," "contravenes," and all similar expressions, with reference to the relation between a legislative act and the organic law or any particular provision thereof connotes more than a mere literal conflict between them, and it is respectfully submitted that often in judicial opinions and the statements of textwriters such expressions are intended and should be taken to mean a conflict between the legislative act and the spirit and fundamental purpose of the constitution or some one or more of its clauses.

Whenever any clause of the constitution, taken literally, stands in the way of the general welfare, the general welfare must be deemed above, and constitutionally above, the letter of the clause.

> "A recent writer upon the Limitations of Police Power says that 'where the letter of the constitution would prohibit police regulations, which, by all the principals of constitutional government, have been recognized as beneficent and permissible restrictions upon the individual liberty of action, such regulations will be upheld by the courts, on the ground that the framers of the constitution could not possibly have intended to deprive the government of so salutary a power; and hence the spirit of the constitution permits such legislation, although a strict construction of the letter may prohibit.' Tild. Lim. 12."

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481.

It may be said with regard to the contract clause, the due process clause and the equal protection clause, as is said, with regard to a certain clause in *Packet Co. v. Keokuk* (1877), 95 U. S. 80, 87, 24 L. Ed. 377: "A mere adherence to the letter, without reference to the spirit and purpose, may in this case mislead, as it has mislead in other cases."

D. The police power, like the constitution, has for its object the promotion of general welfare.

> "It may be said in a general way that the police power extends to all the great public needs. *Canfield v. United States*, 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality and preponderant opinion to be greatly and immediately necessary to the public welfare."
>
> *Noble State Bank v. Haskell* (1910), 219 U. S. 104, 111, 31 S. Ct. 186, 55 L. Ed. 112, 32 L. R. A. N. S. 1062, Ann. Cas. 1912 A, 487.

Everything that has ever been stated as a proper object of the exercise of the power can be ranged under the head of general welfare. The public peace, the public order, the public safety, the public health, the public morals, to mention only a few but perhaps the most usual objects of the exercise of the power—these all range under the head of general welfare. They range under it as certainly as, from the national point of view, do the formation of a more perfect union, the establishment of justice, the insurance of domestic tranquility, the provision for the common (general, public) defense, and the securing, to ourselves and our posterity, of the blessings of liberty. Indeed, the object of any law, organic or nonorganic, state or federal, must be something that ranges under the general-welfare head.

The term "general welfare" or its equivalent occurs in numerous definitions and characterizations of the police power, and in such manner as to make clear that the promotion of that welfare is the essential office of the power, and the foundation of every exercise thereof.

12 C. J., Constitutional Law, sec. 430.

And see:

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 38 A. L. R. 1479;

Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838;

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131 (United States Supreme Court cases cited).

And the following recent cases:

Graham v. Kingwell (Cal.), 24 Pac. (2d) 488;

People v. Coulides, 265 N. Y. Supp. 765, citing *Baker v. Walker*, 204 U. S. 311, 27 S. Ct. 289, 51 L. Ed. 499.

The police power has even been said to be "the law of overruling necessity, for the preservation of the general welfare."

Cook County v. Chicago (1924), 311 Ill. 324, 142 N. E. 512, 516, 31 A. L. R. 442.

E. If the object of all law, organic or nonorganic, and the object of the police power, as exercised in the making of law, be upon ultimate analysis the general welfare, where within the bounds of law—where within the scope of general welfare—lie the boundaries of the police power?

If the police power could be defined with precision, the question could be readily answered. Definitions point to boundaries, boundaries point to definitions.

The difficulty of defining the police power or perceiving its boundaries has been frequently recognized.

6 R. C. L., Constitutional Law, sec. 183.

It is respectfully submitted that much of the difficulty in defining the police power lies in the fact that "police power," like many other terms, has different meanings in different connections.

In its broadest sense the term means, perhaps, sovereign power itself, the source of all positive law, including the organic.

6 R. C. L., Constitutional Law, sec. 184;
12 C. J., Constitutional Law, sec. 415;
Citizens' Ins. Co. v. Hebert (1916), 139 La. 708, 717, 71 So. 955, 958.

In a narrower sense, the police power seems to be the power to meet the *great* public needs, whether such needs as have been immemorially regarded as great (instance those relative to such matters as public health and public morals) or yet others, not immemorially regarded as great, but by times and conditions, according to the preponderant opinion of what is required and the prevailing opinion of what is right, raised to the rank of those things "greatly and immediately necessary to the public good." See *Noble State Bank v. Haskell, supra* (219 U. S. 104, 111). In the narrower sense, police power is but sovereign power in a certain one of its aspects. We have already had occasion (see I B, this Argument) to point out that private acts differ from public acts in degree only, in point of serving the public welfare, and that public acts differ from one another in the same manner. Some serve that welfare in much greater degree than do others.

If certain characterizations of the police power do not serve to make it synonymous with sovereign power, they at least go to the verge of doing so, and make out that the exercise of the police power is a manifestation, at any rate, of sovereign power. Thus, in *Chicago, Burlington & Quincy Ry. Co. v. People* (1905), 200 U. S. 561, 588, 26 S. Ct. 341, 56

L. Ed. 596, we read that the police power is "'incident to and a part of government itself.'" In *Miller v. Board of Public Works* (1925), 195 Cal. 477, 234 Pac. 381, 3 A. L. R. 1479, we read that the police power is "an indispensable prerogative of sovereignty, and not lightly to be limited." "The police powers of a state * * * 'are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions.'" *McKeon v. Railway Co.* (1902), 75 Conn. 347, 53 Atl. 656, 657, 61 L. R. A. 730, quoting from *The License Cases*, 5 How. (46 U. S.) 504, 583, 12 L. Ed. 256.

And see:

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 843, 37 A. L. R. 131;

City of Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419.

Regarded as a power exercised for the great needs of general welfare, the police power is nevertheless, of course, a part of sovereign power. It is merely a matter of terminology, whether we shall give the name "police power" to sovereign power as a whole or to sovereign power as we see it manifest itself or capable of manifesting itself under certain circumstances and to certain ends. In strictness, the police power is no more to be separated from the one and only supreme political power in a state than reason, will or emotion is to be separated from mind and made a mind unto itself. "Police power," then, in the narrow sense of the term (that is to say, the sense in which we usually employ the term) is a name for sovereign power as it may or actually does manifest itself in behalf of great public needs; it is sovereign power in a certain aspect of that power—sovereign power as capable of acting or as actually acting for certain highly important objects of general welfare.

It might seem as if, in a yet narrower sense, the police

power is the specific power to override, in certain instances, the letter of the constitution, in pursuit of the welfare of the people. Perhaps this is the sense in which it is spoken of as a "reserve element of sovereignty." See *Des Moines v. Manhattan Oil Co.*, 193 Iowa 1096, 184 N. W. 823, 23 A. L. R. 1322. The police power, however, is not merely the specific power of contravening the letter of the organic law, but a power which on occasion manifests itself in that specific way. We are easily tempted to define the power in the light of the fact that it may override the letter of the constitution. Seldom, except when the exercise of the power is contrary to that letter, do we bother to name the power or pause to consider whether it is exercised constitutionally. Usually, if the use of the power does not contravene the letter of the organic law, an exercise of the power elicits no particular attention; no one troubles to classify the power; no one troubles to give it a name.

When a statute is enacted to accomplish something "greatly and immediately necessary to the public good," and the statute runs counter to the phraseology of a provision of the constitution, is the statute repugnant to the constitution because repugnant to its letter? The answer is, the statute must be repugnant to the spirit as well as to the letter of the provision in order to be repugnant to the constitution. If, in a given situation, a statute which is necessary to the welfare of all is in *literal* conflict with a given clause of the constitution, the statute is not, in spirit and reality, repugnant to the organic law, and therefore unconstitutional, but in line with that law because in line with its ultimate purpose, and therefore constitutional. This view shows the true significance of "repugnant" in the description of the police power as "the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes

and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same."

Shaw, C. J., in *Commonwealth v. Algers* (1851), 7 Cush (61 Mass.) 53, 85.

It is submitted that in certain definitions and characterizations of the police power, statements that it must be exercised subject to the constitution, or in a manner not repugnant to, or violative of, the constitution, have reference to the spirit and intent of the provisions of the organic law, rather than to their letter. Certainly if to suppress a public nuisance it is necessary to impair the obligation of contracts, deprive of due process, or deny equal protection, the *letter* of the constitution is infringed. Whoever maintains that the letter can be infringed in the interests of general welfare in the case of a public nuisance, will find himself in a dilemma if he tries to explain why the general welfare and not the letter of the constitution is not always the test of whether the police power is constitutionally exercised. To find a statute unconstitutional, we have to find, first, that it violates the letter of the organic law, and, second, that adherence to that letter is more for the general welfare than is the statute.

A term which in one sense denotes the whole and in another a part and perhaps in yet another a part of the part, is doomed to inadequacy and uncertainty of definition. But it is respectfully submitted that some such definition as the following points to the basis, nature and scope of the power: It is the sovereign power acting or seen in point of its capacity to act to terminate any existent or obviate any threatened detriment or danger to the general welfare of the community, whether such sovereign power be inherent in or

delegated to the people of that community, and whether or not in the exercise of that power, when to use it is greatly and immediately necessary to the public good, it contravenes the letter of the organic law.

Thus it is that the police power is "society's natural right of self-defense."

McGuire v. Chicago, Burlington & Quincy Rd. Co. (1906), 131 Iowa 340, 354, 108 N. W. 902, 907.

And see:

12 C. J., Constitutional Law, sec. 415, and f. n. 13;
Barret v. Rickard (1910), 76 Neb. 769, 124 N. W. 153, 155-6;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

F. What we may term a balance-of-welfare theory of the relation between the police power and the letter of the constitution is evidently in process of evolution.

Since the organic law and the police power have as a common object the promotion of the general welfare, they must and do work hand in hand. The constitution cannot stand in the way of the fulfillment of the common object by the police power, any more than the police power can stand in the way of the fulfillment of that object by the constitution. Either the police power or the constitution, in preventing the fulfillment of the common object, would, needless to say, defeat the fulfillment of its own.

The boundaries of the police power are being gradually ascertained through the process of exclusion and inclusion.

6 R. C. L., Constitutional Law, sec. 185.

"With regard to the police power, as elsewhere in the law, lines are pricked out by the general approach and contact of decisions on the opposing sides."

Noble State Bank v. Haskell, supra, 219 U. S. 104, 111.

It is submitted that the decisions substantiate the following observations concerning the line between the constitutional and the unconstitutional exercise of the police power: 1. On one side of the line range those exercises of the police power which either do not contravene the letter of the constitution or, being contrary to the letter, tend more to promote the general welfare and fulfill the spirit of the constitution than would strict adherence to its letter. 2. On the other side of the line range such exercises of the police power as not only are contrary to the letter of the constitution but tend less than would adherence to its letter to fulfill its spirit and promote the common weal.

If the foregoing observations are correct, there is truth in what we may term a balance-of-welfare doctrine with respect to the question whether the police power or the letter of the constitution shall prevail in any given situation in which, on the one hand, it is assumed to assert the police power, and, on the other, to challenge the exercise of the power on the ground that such exercise contravenes some one or more of the prohibitions of the organic law. Thus the true constitutional limitation on the exercise of the police power is at the line at which the exercise of the power becomes less promotive of the general welfare than is a strict adherence to the letter of the organic law.

If the object of organic law be the general welfare, and the general welfare be likewise the object of the police power, the point whether adherence to or departure from the letter of the constitution is the more for the public welfare, must be the fulcrum on which pivot the scales in which legislative bodies must weigh their duties to the people, and in which courts must weigh the power of legislatures. Legislation is unconstitutional only when, in those scales, it weighs less than the letter of the constitution.

It has been judicially recognized that if legislation is in

conflict with the letter of the constitution, the criterions by which the constitutionality or unconstitutionality of the legislation shall be adjudged involve the *degree* to which it promotes the general welfare.

Pennsylvania Coal Co. v. Mahon, supra, (260 U. S. 393, 416).

G. A state may balance its police power against the letter of the federal constitution.

The truth of the statement is so implicit in so many of the decisions, state and federal, cited in this brief, that it seems almost superfluous to fortify the proposition with particular statements and citations.

The contract clause of the federal constitution does not inhibit a state from impairing the obligation of contracts when exercising its police power with a view to attaining a great and immediate good.

See Burdick, The Law of the American Constitution, secs. 196 and 197.

Nor does the Fourteenth Amendment place a limitation upon the subjects over which a state may exercise the power.

See 2 Cooley, Constitutional Limitations (8th ed.), 1234, f. n.

Police power belongs inherently to each of the states.

12 C. J., Constitutional Law, sec. 417;
2 Cooley, Constitutional Limitations (8th ed.), p. 1232.

Except possibly within a field which the people of the United States, as distinguished from the people of one of the states, may occupy exclusively, the federal constitution has not deprived the states of their police power.

Brown v. Maryland (1827), 12 Wheat. (25 U. S.) 419, 443;

Boston Beer Co. v. Massachusetts (1877), 97 U. S. 25, 33, 24 L. Ed. 989;
Reeves v. Corning (1892), 51 Fed. 774, 785;
State v. Schlenker (1900), 112 Iowa 642, bot. 649, 84 N. W. 698, 699, 51 L. R. A. 347, 84 Am. St. Rep. 360;
State v. Fitzpatrick (1888), 16 R. I. 54, 11 Atl. 767, 769;
City of Rochester v. West (1898), 29 App. Div. 125, 51 N. Y. Supp. 482, 484;
City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 77, 78, 53 L. R. A. 442.

H. Whether given legislation promotes the general welfare at all, and if so, the *degree* to which the legislation promotes the general welfare, may depend upon times and conditions.

As has in effect been pointed out, such matters as the public peace, order, safety, health and morals are at all times to be weighed against the letter of the constitution. Even with respect to these matters, undoubtedly certain measures which at certain times and under certain conditions are not justified by considerations of general welfare and are unconstitutional, may so far promote that welfare at certain other times and under certain other conditions as to be constitutional. The statute now under consideration is not unconnected with certain of these matters, in particular peace and order, because of conditions now obtaining.

Such economic measures as the letter of the constitution would kill at one time may at another time kill the letter of the constitution.

No one will dispute that at most times and under most conditions most measures in contravention of the letter of the contract clause, the due process clause or the equal protection clause are as contrary to the spirit of the constitution as to its letter. But conditions may so change, even over night, as to present an occasion on which measures de-

signed to serve the general welfare in the particular instance may serve it so well as to outweigh all other considerations, and thus a measure that would have been contrary to the public interest yesterday may today be imbued with a public interest of the most vital sort. Such a measure is the statute considered in the case at bar.

> "Plainly circumstances may so change in time or so differ in space as to clothe with such an interest what at other times or in other places would be a matter of purely private concern. It is enough to refer to the decisions as to insurance, in *German Alliance Insurance Co. v. Lewis*, 233 U. S. 389; irrigation, in *Clark v. Nash*, 198 U. S. 361; and mining, in *Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527. They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public generally of each specific thing affected cannot be made the test of public interest, *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U. S. 30, 32, and that the public interest may extend to the use of land. They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair. See also *Noble State Bank v. Haskell*, 219 U. S. 104, 110, 111."

Block v. Hirsch (1921), 256 U. S. 135, 155, 41 S. Ct. 458, 65 L. Ed. 865, 16 A. L. R. 165.

A matter which in general is private may in a particular situation become public.

Edgar A. Levy Leasing Co. v. Siegel (1922), 258 U. S. 242, 246, 42 S. Ct. 289, 66 L. Ed. 595.

> "The police power of the state, never having been exactly defined or circumscribed by fixed limits, is considered as being capable of development and modification within certain limits, so that the powers of governmental control may be adequate to meet changing social, economic, and political conditions. It is very broad and comprehensive, and is liberally understood and applied.

The changing conditions of society may make it imperative for the state to exercise additional powers, and the welfare of society may demand that the state should assume such power."

6 R. C. L., Constitutional Law, sec. 188, citing ample authority.

"* * *. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter, and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature from time to time to adopt its own means to effectuate legitimate objects and to mold and model the exercise of its powers as its own wisdom and the public interest should require."

"The police power, as such, is not confined within the narrow circumscription of precedents, resting upon past conditions which do not cover and control present-day conditions obviously calling for revised regulations to promote the health, safety, morals, or general welfare of the public; that is to say, as a commonwealth develops politically, economically and socially, the police power likewise develops, within reason, to meet the changed and changing conditions. What was at one time regarded as an improper exercise of the police power may now, because of changed living conditions, be recognized as a legitimate exercise of that power."

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 545, 213 N. W. 835, 838.

And see *City of Aurora v. Burns*, 319 Ill. 84, 149 N. E. 784, 788.

"What was a reasonable exercise in the days of our fathers may today seem so utterly unreasonable as to make it difficult for us to comprehend the existence of conditions that would justify same; what would by our fathers have been rejected as unthinkable is today accepted as a most proper and reasonable exercise thereof."

Streich v. Board of Education (1914), 34 S. D. 169, 147 N. W. 779, 781, Ann. Cas. 1917 A, 760;
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 28 A. L. R. 1479.

"Doubtless the statute before us would be condemned by an earlier generation as a temerarious interference with the rights of property and contract * * *. But we must not fail to consider that the police power is the least limitable of the powers of government and that it extends to all the great public needs; that constitutional law is a progressive science; that statutes aiming to establish a standard of social justice, to conform the law to the accepted standards of the community, to stimulate the production of a vital food product by fixing living standards or price for the producer, are to be interpreted with that degree of liberality which is essential to the attainment of the end in view (*Austin v. City of New York, supra*, page 117 of 258 N. Y., 179 N. E. 313); and that mere novelty is no objection to legislation (*People ex rel. Durham Realty Corp. v. La Fetra*, 230 N. Y. 429, 130 N. E. 601, 16 A. L. R. 152)."

People v. Nebbia (1933), 262 N. Y. 259, 186 N. E. 694, 699.

I. An economic depression, as well as a war, may constitute or comprise an emergency such as warrants an unusual exercise of the police power. In no case so far decided has it been said that war provides the sole occasion for such legislative overriding of the letter of the constitution as would not be permissible in ordinary times and under normal circumstances. On the contrary, the same reasoning that jus-

tifies certain legislation in wartime, and harmonizes with the constitution certain exercises of the police power in wartime emergency, justifies certain legislation in peacetime, and harmonizes with the constitution certain exercises of the police power in peacetime emergency. In peacetime as in wartime, the point on which turns the conflict between the police power and the letter of the organic law, is the matter of general welfare. No better evidence of this exists than the fact that public peace, order, safety, health and morals can *always* be furthered at the expense of the letter of the constitution, but certain other things can be furthered at that expense only when an emergency of some sort raises them, for the time being, to the plane that matters of public peace, order, safety, health and morals occupy in peace or war, and in times of economic depression as well as in times of prosperity.

Various definitions of the police power embrace such terms as "prosperity," "economic welfare," "economic concern," etc., etc.; thus evincing that the police power may be used to further the general welfare along economic lines, and indicating, also, that an economic emergency may be a proper occasion for exercising the power in ways in which it might not, ordinarily, be constitutionally exercised. And see:

Bankers' Trust Co. v. Russell (Mich.), 249 N. W. 27, 29 (United States Supreme Court decisions cited).

We have already pointed out that numerous definitions of the police power embrace the term "general welfare" (I D, this Argument) and that general welfare, according to judicial definitions thereof, embraces the primary social interest of *economic* welfare (I A, this Argument, citing cases here again cited).

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 10, 147 N. W. 195, 199, L. R. A. 1917 B, 1918;

Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

It has not infrequently been said that one of the purposes of the police power is, "to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires."

Stetter v. O'Hare (1914), 69 Orl. 519, 531, 139 Pac. 743, 747, Ann. Cas. 1916 A, 217, 222;
Ex parte Townsend (1911), 64 Tex. Cr. 350, 144 S. W. 628, 631, 33 Ann. Cas. 1914 C, 814, 817;
State v. Mamlock (1910), 58 Wash. 631, 633, 109 Pac. 47, 137 Am. St. Rep. 1085;
Morrison v. State (1906), 116 Tenn. 534, 543, 95 S. W. 494, 496.

A power that may be exercised to promote prosperity may certainly be exercised to deal with depression. Therefore it is important to note that not infrequently the promotion of public prosperity has been said to be a function of the power.

"We hold that the police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety. *Lake Shore & Mich. South. Ry. Co. v. Ohio*, 173 U. S. 285, 292; *Gilman v. Philadelphia*, 3 Wall 713, 729; *Pound v. Turck*, 95 U. S. 459, 464; *Railroad Co. v. Haven*, 95 U. S. 470."

Chicago, Burlington & Quincy Ry. Co. v. People, supra (200 U. S. 561, 592).

It is a power under which "persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right in the legislature to do which, no question ever was, or, upon acknowledged general principles, ever can be made, * * *."

Thorpe v. Rutland & Burlington Rd. Co. (1854), 27 Vt. 140, 149, 62 Am. Dec. 625, 633;
Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 482.

"Whatever may be the limits by which the earlier decisions circumscribed the (police) power, it has in more recent decisions been defined to include all those regulations designed to promote the public convenience, the general welfare, the general prosperity, and extends to all great public needs, as well as regulations designed to promote the public health, the public morals or the public safety."

State v. Pitney (1914), 79 Wash. 608, 140 Pac. 918, 919, Ann. Cas. 1916 A, 209.

See also:

Noble State Bank v. Haskell, supra, (219 U. S. 104, 111);
Bacon v. Walker, 204 U. S. 311, 318, 51 L. Ed. 499, 27 S. Ct. 291;
Barbier v. Connolly (1885), 113 U. S. 27, 31, 5 S. Ct. 357, 28 L. Ed. 923;
Women's Kansas City St. Andrew Society v. Kansas City (1932), 58 F (2d) 593, 599;
City of Des Moines v. Manhattan Oil Co. (1922), 193 Iowa 1096, bot. 1104, 184 N. W. 823, 23 A. L. R. 1322.

"Emergency laws in time of peace are uncommon but not unknown. Wholesale disaster, financial panic, the aftermath of war *(Hamilton v. Kentucky Distilleries & W. Co.,* 251 U. S. 146, 161, 40 S. Ct. 106, 64 L. Ed. 194), earthquake, pestilence, famine, and fire, a combination of men or the force of circumstances may, as the alternative of confusion or chaos, demand the enactment of laws that would be thought arbitrary under normal conditions *(Bowditch v. Boston,* 101 U. S. 16, 18, 19, 25 L. Ed. 980; *American Land Co. v. Zeiss,* 219 U. S. 47, 31 S. Ct. 200, 55 L. Ed. 82)."

People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 606.

In no well considered modern case is it said, with reference to public (common, general) welfare, that the police power is for exercise with respect to such welfare in this connection but not in that, or that the letter of the constitution must yield to it in connection with this phase or aspect of such welfare but not in connection with that.

Although the land involved in the case at bar is not farm land, the importance of the statute to the people of the State of Minnesota can not be fully realized without bearing in mind that agriculture is one of the important industries of the state and that the prevailing economic distress involves a multitude of farm mortgages.

It can hardly be maintained that a power which in ordinary times and circumstances can be exercised in behalf of the health, morals, peace, order and safety of the people, and otherwise for their welfare in general, can not be exerted by them for their economic welfare in times when conditions are such that they render families homeless, take bread from the mouths of children, drive men, women and children into breadlines and in various ways throw large numbers of persons upon the bounty of public charity—times when conditions are such that they even create and fan the very sparks of insurrection itself.

The Court of Appeals of the State of New York, in *People v. Nebbia* (1933), 262 N. Y. 259, 186 N. E. 694, 698, noticed as a reason justifying a legislative enactment "scenes of violence and disorder in the attempt to organize so-called milk strikes as a protest against the low prices paid for milk."

It should hardly be necessary to argue that in times like these the power can be used to keep families in their homes, farmers on their farms. While farmers keep their land, they can at least keep themselves usefully employed and keep themselves and their families from becoming public charges. Whether A or B, as an individual, owns some particular

home or farm, is not the question, but what matters is the detriment and danger to *all* the citizens of the state through what has happened or may happen to *many* of its citizens.

J. The statute is not, and does not profess to be, a cure for the depression or any phase of the depression, but merely a means of ameliorating, during the economic emergency, a certain condition fraught with public detriment and danger.

It is to be noted, too, that the statute is a legislative exercise of a legislative power, and not in any sense or degree an abdication of such power.

K. During the past generation, with the concept of the police powers undergoing clarification, legislatures have more and more weighed this power against the letter of the organic law.

It is an irrefutable fact that "during the last generation the pendulum has swung."

Burdick, The Law of the American Constitution, secs. 196 and 197.

A detailed history of the swing of the pendulum may be found in 2 Warren, The Supreme Court in United States History, 735 et seq., esp. 740-742.

Although the power must always have been as great as it now is, the *concept* of the breadth of the power has grown as courts and legislatures have come to have a better understanding of the relation between the power and the organic law.

The police power can hardly be conceived of as something more potent at one time than at another (see *Brown v. Maryland*, 12 Wheat., 25 U. S., 419, 439), but as a power the application of which contracts or enlarges as the necessity for applying it grown or diminishes. So, in the following quotation, it would seem, the "growth of the police power" means merely the growth of the necessity for using the

power, and, consequently, of the bounds of the actual exercise or application of the power.

> "* * * the growth of the police power must from time to time conform to the growth of our social, industrial and commercial life. You cannot put a straight-jacket on justice any more than you can put a straight-jacket on business."

Leonard v. State (1919), 100 Ohio St. 456, 127 N. E. 464, 465.

We must without hesitation or a blush of apology dismiss the view that those who framed our constitution and those who voted to adopt it intended it to be a straight-jacket on progress or the public welfare.

> "The tendency of modern development is in the direction of greater, rather than more restricted use of police power, and necessarily so in order to meet the new dangers and increase of old dangers, constantly occurring as natural incidents of advancing civilization."

Chicago, Milwaukee & St. Paul Ry. Co. v. City of Milwaukee (1897), 97 Wis. 422, 72 N. W. 1118, 1123.

And see:

City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 77, 78, 53 L. R. A. 442.

Although of late the use of the power has become more and more frequent and has extended over broader fields than it touched in the early days of the republic, it must not be thought that the power has not always existed, any more than it must be thought that the power itself has grown. Although the term "police power" found its way into the decisions in 1827, via *Brown v. Maryland,* 12 Wheat. (25 U. S.) 419, 443 (see 1 Warren, The Supreme Court in United States History, 605, f. n. 2), the *use* of the power in this country antedated the use of the term (see *Munn v. Illinois,* 94 U. S. 113, 125, 24 L. Ed. 77). Not only is it true that the yielding

of the letter of the constitution to its spirit is no new thing, but it is true, of a necessity, that the existence of the power antedated the very organic law with whose letter it sometimes conflicts. As said in *City of Rochester v. West* (1898), 51 N. Y. Supp. 482, 484, the power, generally speaking, "may be characterized as a power which inheres in the state, and in each political subdivision thereof. * * * It constituted an essential feature of some of the enactments of the Twelve Tables, and it has for ages been adopted and enforced by all civilized nations as a cardinal rule of the civil law." The fact that the relation between the police power and the constitution was not at first thoroughly grasped, and therefore not considered in many cases in which it might have been, is no argument against the existence and the scope of the power.

If the statutes involved in certain cases were the outgrowths of previous depressions, and were emergency acts, notwithstanding the fact that the decisions in question do not allude to those statutes as emergency measures or discuss the relation between the organic law and the police power, two observations are in order:

1. The force of those decisions as standing for a narrow construction of the constitution is weakened by their want of direct reference to any emergency and their lack of allusion to the police power.

2. Those decisions must yield to the authority of later cases, in which emergency statutes are considered as such and the relation indicated which subsists and must always have subsisted between the police power and the constitution.

As to *Munn v. Illinois, supra*, and cognate cases: It would stultify the principle enunciated therein to hold that it is applicable only where the regulation of rates or prices is concerned. The principle is obviously applicable not only

where rates or prices are regulated in connection with a business affected with a public interest, but where for any reason anything whatsoever is so far affected with such an interest as to make it reasonably necessary that it be taken under legislative control. The difference between regulating the use of property "clothed with a public interest" and extending for the public benefit the period in which redemption of land may be effected is not a difference in principle. It is not without reason if in a recent case, *People v. Nebbia*, 262 N. Y. 259, 186 N. E. 694, 698, the Court of Appeals of the State of New York, citing numerous decisions of the Supreme Court of the United States, relates to a single principle the exercise of the police power in a large number of cases varying greatly from one another in their facts. From the time (1820) when Congress empowered the city of Washington "to regulate * * * the rates of wharfage at private wharves, * * * the sweeping of chimneys, and to fix the rate of fees therefor, * * * and the weight and quality of bread," (see *Munn v. Illinois, supra*, 94 U. S. 113, 125) down to, through and past the time (1921) when it was held that Congress could regulate the amounts of rents and the tenures of lessees in that city (see *Block v. Hirsch, supra*, 256 U. S. 135), the principle has always been applicable, that, given a situation in which or occasion on which the public interest is so great as to call for legislation contravening the *letter* of the constitution, considerations of general welfare prevail over that letter—the legislation is *constitutional*.

II.

Certain matters which the courts judicially notice, certain presumptions with which they surround legislation, and the general attitude which judicial tribunals take toward legislation, all tend to support the act.

The relation between the organic law and the police power involves the principle that whether the letter of that law or the police power shall prevail depends upon considerations of general welfare. In the actual balancing of the letter against the power—the actual process of balancing considerations of public welfare—certain principles, presumption, etc., apply. They determine what part the court and what part the legislature takes in the process, and how each shall play its part.

A. The court is bound to take judicial notice of the fact that a grave economic emergency exists.

1. The courts judicially notice matters of common knowledge.

23 C. J., Evidence, sec. 1810.

The best evidence that an emergency exists is public recognition of the fact. The courts can not be without knowledge of that evidence. They know that people in all walks of life are continually discussing, and have for years been continually discussing, the economic depression; that newspapers and magazines have teemed, and teem now more than ever, with editorials and other articles concerning it; that books have been written about it; that sermons have been preached about it, and that innumerable other discourses have been pronounced concerning it; that there has been discussion without end as to its cause or causes, its numberless ramifications and effects, its composite character (its consisting of or producing countless emergencies that merge to make of it one vast emergency), the time and manner of its beginning, its probable duration and how it may end, as well as what its after effects may be, and the possibilities of curing or ameliorating it as a whole or in some one or more of its innumerable particulars.

That the depression has confronted the respective states

individually and the United States as a whole with countless and various detriments and dangers, is also a matter of common knowledge. It is even such knowledge, that the whole civilized world faces an emergency. Recently representatives of the principal nations assembled in London, to consider the economic problems of the world. The fact that there was such a conference, the fact that it found the problems overwhelming, the fact that it adjourned, temporarily at least, without having solved the problems, and the fact that most if not all of the detriments and dangers it sought to remove still beset the world—these facts are all matters of the most common of common knowledge.

It would seem to require no specific authority for the proposition that a court may judicially notice the existence of a public emergency. Yet such authority exists.

Block v. Hirsch, supra, 256 U. S. 135, 154;
Chastleton Corporation v. Sinclair (1924), 264 U. S. 543, 547, 68 L. Ed. 841, 44 S. Ct. 405.

In the latter case this court said it could judicially notice that an emergency has passed. It would be strange if a court could notice, judicially, that an emergency has passed, but could *not* notice, judicially, that an emergency has *not* passed. This court is bound to notice that the depression, as a whole an emergency, has *not* passed, and that the exigencies which it embraces or of which it is composed, among them the exigencies of the real estate mortgage situation, have *not* passed; moreover, that the real estate mortgage situation is not confined to any one state, but is of nation-wide scope, and has been and is the subject of national efforts for relief.

2. This court judicially notices the proclamations, and the contents thereof, of the President of the United States.

23 C. J., Evidence, sec. 1900.

Therefore this court knows that the President, in his proclamation of a bank holiday (proclamation of March 6, 1933), proclaimed the existence of an economic emergency of national scope.

3. This court judicially notices acts of Congress.

23 C. J., Evidence, sec. 1947.

"That the Congress hereby declares that the present economic depression has created a serious emergency, due to widespread unemployment and increasing inadequacy of State and local relief funds, resulting in the existing or threatened deprivations of a considerable number of families and individuals of the necessaries of life, and making it imperative that the Federal Government cooperate more effectively with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people."

Federal Emergency Relief Act of 1933 (H. R. 4604, approved May 12, 1933); initial part of act.

See also Sec. 4 (a) of the Act.

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities and render imperative the immediate enactment of title I of this Act."

Agricultural Adjustment Act (H. R. 3835, approved May 12, 1933); preamble to Title I.

"Section I. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist * * *."

National Industrial Recovery Act, of June 16, 1933.

See also the Emergency Railroad Transportation Act, 1933 (S. 1580, approved June 16, 1933), Sec. 2—reference to "the present acute economic emergency."

4. The court may not only take judicial notice of the above cited and other congressional acts referring to the depression, but may take notice of all allusions to it in the Congressional Record, in which numerous discussions of the economic debacle and references to it are reported.

23 C. J., Evidence, sec. 1934, and footnote, particularly f. n. 95 (a, 4).

5. "* * * a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect."

Block v. Hirsch, supra, (256 U. S. 135, 154).

See also, on the respect due to a legislative declaration of the existence of an emergency, *Chastleton Corp. v. Sinclair, supra,* (264 U. S. 543, 547).

Block v. Hirsch and *Chastleton Corp. v. Sinclair* concern the respect which this court owes to declarations by Congress, but it is submitted that the court owes the same respect to the declarations of state legislatures.

In *Union Dry Goods Co. v. Georgia Public Service Corp.,* 248 U. S. 372; 39 S. Ct. 117, 9 A. L. R. 1420, reference is made to "the exigencies of the public welfare when determined in an appropriate manner by the authority of the State."

The reference is made in a manner to indicate that the determination, by such authority, that the state faces an emergency, is entitled to more than great respect—is entitled to be regarded, by this court, as practically a conclusive finding.

It has been determined in an appropriate manner by the authority of the State of Minnesota that the real estate mortgage situation in Minnesota is a matter of public exigency. The act involved in the case at bar declares the existence of a "public economic emergency." And both in the case at bar and in *State v. Moeller,* 249 N. W. 330 (advance sheet), the Supreme Court of Minnesota has taken judicial notice of the public emergency attendant upon the real estate mortgage situation in that state.

B. Numerous presumptions come to the aid of a legislature, to support its enactments, and it seems that both federal and state courts indulge the same presumptions with regard to whether state legislation is repugnant to the federal constitution.

In the first place, numerous cases attest the general proposition that any legislative act whatsoever is clothed with a strong presumption of its constitutionality.

> Third Dec. Dig., Constitutional Law, sec. 48;
> 12 C. J., Constitutional Law, sec. 221.

Not only is it presumed that an act of the legislature of a state is in harmony with the constitution of the state, but there is a presumption that the act does not violate the Constitution of the United States.

> 12 C. J., Const. Law, sec. 226, citing, among other cases, *McCabe v. Atchison, etc., Ry. Co.* (1911), 186 Fed. 966; (1914), affd. 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69.

Every reasonable presumption will be made in behalf of the constitutionality of a legislative act.

Eckerson v. Des Moines (1908), 137 Iowa 452, 115 N. W. 177.

The police power, though so exerted by the legislature as to interfere with contracts, is presumed to be legitimately used.

Hunter v. Colfax Consol. Coal Co. (1916), 175 Iowa 245, 154 N. W. 1037;
L. R. A. 1917 D, 15, Ann. Cas. 1917 E, 803.

Certain cases hold that a legislative act will be held constitutional unless *clearly* shown not to be so.

12 C. J., Const. Law, sec. 222.

Certain other cases hold that a legislative act will be held constitutional unless shown *beyond a reasonable doubt* not to be so.

Third Decennial Digest, Constitutional Law, sec. 48 (see p. 470);
12 C. J., Constitutional Law, sec. 222.

Or unless the act is *plainly* unconstitutional.

Third Dec. Dig., Constitutional Law, sec. 48 (see p. 466);
12 C. J., Constitutional Law, sec. 222.

And/or *palpably* so.

Nolen v. Reichman (1915), 225 Fed. 812;
Younker v. Susong (1916), 173 Iowa 663, 156 N. W. 24.

Or unless *clearly* and *palpably* so.

Third Dec. Dig., Const. Law, sec. 48, (see p. 472).

A recent pronouncement in point is as follows:

"Courts are reluctant to declare legislative enactments unconstitutional, and will do so only when the

violation is clear, palpable, and practically free from doubt."

Waugh v. Shirer (Iowa), 249 N. W. 246;
See also *Hubbell v. Herring* (Iowa), 249 N. W. 430, 435.

Among recent cases in point on the presumption of constitutionality and the duty of the courts to seek to sustain rather than defeat legislation, are the following:

Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Dyer (Fla.), 143 So. 201, 203;
State v. Prevatt (Fla.), 148 So. 578, 579;
Wayne Township v. Brown (Ind.), 186 N. E. 841, 847;
Chassanoil v. City of Greenwood (Miss.), 114 So. 781, 783;
Rider v. Cooney (Mont.), 23 Pac. (2d) 261;
State v. Hall (Neb.), 249 N. W. 756, 758-9;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
Commonwealth v. Great American Indemnity Co. (Pa.), 167 Atl. 793, 797-8;
Utah Mfrs. Ass'n. v. Stewart (Utah), 23 Pac. (2d) 229, 232;
Richmond Linen Supply Co. v. City of Lynchburg (Va.), 169 S. E. 554;
Aetna Ins. Co. v. Commonwealth (Va.), 169 S. E. 859, 864;
Mason v. City of Seattle (Wash.), 24 Pac. (2d) 91, 92;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

C. The courts are not concerned with legislative motives.

If the good faith of the legislature could be impugned, we might make an argument like this: If a statute is not enacted in good faith, but palpably involves a fraudulent assumption of the exercise of the police power, the statute being but a subterfuge whereby the gaining of ulterior ends is sought—ends other than those of general welfare—the statute itself breaks down the presumptions which clothe

legislative acts. It is obvious that only in an unusual case —a clear case of legislative mala fides—can the statute itself defeat the presumption. Such a statute does not deserve to have the question asked concerning it, whether the general welfare is the more to be preserved by the act or by adherence to the letter of the constitution. Such a statute should without hesitation be declared unconstitutional.

Not only is there no apparent basis for such an argument, but if basis for it existed it could not be made, because bad faith can never be imputed to a legislature. A proper motive for every legislative enactment is *conclusively* presumed.

12 C. J., Constitutional Law, sec. 224;
Appalachian Elec. Power Co. v. Smith, 4 Fed. Supp. 6, 22;
Blanchard v. City of New York, 262 N. Y. 5, 186 N. E. 29, 32.

This court applies the presumption of proper motive to the acts of state legislatures as well as to the acts of Congress.

United States v. Des Moines Navigation & Ry. Co. (1891), 142 U. S. 510, 544, 12 S. Ct. 308, 35 L. Ed. 1099.

"The motives of legislators in the enactment of a statute cannot be inquired into judicially in determining the validity of the enactment."

Third Dec. Dig., Constitutional Law, sec. 70 (3), citing among other cases, *Smith v. Kansas City Title & Trust Co.* (1921), 255 U. S. 180, 210, 41 S. Ct. 243, 65 L. Ed. 577.

"No principle of our constitutional law is more firmly established than that this court may not, in passing upon the validity of a statute, inquire into the motive of Congress. *United States v. Des Moines Navigation Co.,* 142 U. S. 510, 544; *McCrary v. United States,* 195 U. S.

27, 53-59; *Weber v. Fried*, 239 U. S. 325, 330; *Dakota Central Telephone Co. v. South Dakota*, 250 U. S. 163, 184. * * *"

Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161).

D. Legislative policy is not a matter for judicial review. It is not for the courts to say whether legislation is wise or unwise, whether it manifests good policy or bad.

"The question of the wisdom, justice, policy, or expediency of a statute are for the Legislature alone."

Third Dec. Dig., Constitutional Law, sec. 70 (3), citing, among other cases:
National Union Fire Ins. Co. v. Warburg (1922), 260 U. S. 71 (see 77), 43 S. Ct. 32, 67 L. Ed. 136;
United States v. Lanza (1922), 260 U. S. 377 (see 385), 43 S. Ct. 141, 67 L. Ed. 314.

"Nor may the court inquire into the wisdom of the legislation. *McCullough v. Maryland*, 4 Wheat. 316, 421; *Gibbons v. Ogden*, 9 Wheat. 1, 197; *Brushaber v. Union Pacific R. R. Co.*, 240 U. S. 1, 25; *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357."

Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161).

See also:

Block v. Hirsch, supra (256 U. S. 135, 138);
Union Dry Goods Co. v. Georgia Public Service Corp., supra (248 U. S. 372, 374);
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558).

And the following recent decisions:

Williams v. Mayor, 53 S. Ct. 431, 433;
Wonder Bakeries Co., Inc., v. White, 3 F Supp. 311;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;

State v. Dyer (Fla.), 143 So. 201, 203-4;
Mississippi State Tax Commission v. Flora Drug Co. (Miss.), 148 So. 373, 377;
Little v. American State Bank (Mich.), 249 N. W. 22, 23;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
McPherson v. Fisher (Ore.), 23 Pac. (2d), 913, 914;
State v. Morrison (S. Dak.), 249 N. W. 563, 565;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

Therefore the court is not concerned with whether creditors may also be debtors. If the legislature deems it more important to the public welfare to go to the aid of debtors than to go to the aid of creditors, if the latter need aid, the matter lies in the realm of legislative wisdom and discretion.

Legislative wisdom or lack thereof, in doing nothing for creditors in the period 1912-1920, a period of rising prices and security-valuations, if indeed anything could or should have been done for creditors in that period, is not a proper matter for judicial inquiry, and is not a proper criterion by which to determine whether a present exercise of the police power, for the relief of the public through the relief of mortgagors of real estate, is or is not a valid exercise of the power.

If it is the thought of the legislature that in view of the large areas of agricultural lands in the state and the great number of its citizens who are engaged in agriculture, which is a paramount industry of the state, the vocation of the farmer is so fundamentally important that every effort should be made to help the farmer remain on his farm, the legislature is certainly entitled to the thought. If it is the thought of the legislature that homes and homeowners are of such fundamental importance to the state that every effort should be made to help the homeowner keep his home, the legislature is certainly entitled to the thought. If the legis-

lature has the thought that although in these times most creditors are debtors, nevertheless there are more debtors than creditors, and that a man's distress in the capacity of debtor is greater than his distress in the capacity of creditor, and that the general welfare can be better promoted by a concession to debtors than by a concession to creditors, the legislature is certainly entitled to the thought. If the legislature has the thought that although it can do something positive for the general welfare by aiding mortgagor-debtors, there is little or nothing positive it can do to aid mortgagee-creditors, and that to do nothing with regard to mortgage debts is but to let a bad situation grow worse, alike for mortgagors and mortgagees and the public in general, the legislature is certainly entitled to the thought.

E. The legislature is the first judge of what is for the greatest good of the greatest number, and so for the true ultimate good of all.

> "Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."
>
> *Missouri, Kansas & Texas Ry. Co. v. May* (1904), 194 U. S. 267, 270, 24 S. Ct. 638, 48 L. Ed. 971.

> "The legislative department is the judge, within reasonable limits, to determine what public convenience and public welfare require, and the wisdom of its legislation is not the concern of the courts. It is our duty to sustain an act, unless its invalidity is in our judgment beyond a reasonable doubt. *Beach v. Bradstreet,* 85 Conn. 344, 82 Atl. 1030, Ann. Cas. 1913 B, 946; *State v. Lay,* 86 Conn. 145, 84 Atl. 522; *Cooper v. Telfair,* 4 Dall. 14, 19, 1 L. Ed. 721.
>
> "The Legislature by the passage of this act has

judged that the public convenience and welfare would be substantially subserved by its enactment."

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

F. Before the court can overturn the act, the court must find that the legislature made a mistake as to whether there is any basis in fact for a finding that the public welfare is jeopardized, else a mistake as to whether there is any reasonable connection between the provisions of the act and the thing which jeopardizes that welfare.

The police power is exercised improperly if "there is no basis in fact on which to support the legislative finding of public welfare, or when the remedy prescribed has no possible connection with the evil to be cured."

American Coal Mining Co. v. Special Coal & Food Commission of Indiana (1920), 268 Fed. 563; (1921) appeal dismissed, 258 U. S. 632, 66 L. Ed. 801, 42 S. Ct. 273.

And see:

State v. Harper (1923), 182 Wis. 148, 196 N. W. 451, 453, 33 A. L. R. 269;

People v. Coulides, 265 N. Y. Supp. 765, 768 (recent case).

The court is confronted by two questions: 1. Whether a basis in fact exists for the legislative judgment that a real estate mortgage situation of an emergency character exists, or whether such judgment is unreasonable (arbitrary). 2. Whether the statute has "any possible connection with the evil to be cured."

A thing is arbitrary which is without basis in any fact other than the pleasure or caprice of the author of the thing, and therefore without a reasonable basis, or basis in reason; unreasonable.

See *Lindsley v. National Carbonic Gas Co.* 220 U. S. 61, 78, 31 S. Ct. 337, 55 L. Ed. 369, Ann. Cas. 1912 C, 160.

The court judicially notices the existing emergency—judicially knows that a "basis in fact" exists for "a finding of public welfare." Consequently the legislative finding that such an emergency exists cannot be unreasonable (arbitrary). However, were the court without knowledge of such "basis in fact," the court would be bound to presume its existence.

Such facts and circumstances as must exist to render a legislative act constitutional are *presumed* to exist.

12 C. J., Constitutional Law, sec. 222.

It has even been said that it is the duty of the court to assume the existence of *any conceivable facts and circumstances* the existence of which is necessary to the constitutionality of a legislative act.

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 147 N. W. 195, L. R. A. 1917 B, 198; (1916) affd. 242 U. S 153, 37 S. Ct. 28, 61 L. Ed. 217.

The legislature is presumed to have passed an act with full knowledge of existing conditions.

12 C. J., Constitutional Law, sec. 225.
And see *United States v. Des Moines Navigation and Ry. Co., supra,* (142 U. S. 510, 544).

There are recent cases in point on the proposition that a legislature is presumed to have found the facts on which its power to act must be predicated.

Hutchens v. Jackson (N. Mex.), 23 Pac. (2d) 355;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

"The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circum-

stances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. *Euclid v. Ambler Co., supra* (272 U. S. 365), 388, 395; *Radric v. New York,* 264 U. S. 292, 294; *Hadachek v. Los Angeles,* 239 U. S. 394, 408-412, 413-413; *Cusack Co. v. City of Chicago,* 242 U. S. 526, 530-531; *Rast v. Van Danman & Lewis,* 240 U. S. 342, 357; *Price v. Illinois,* 238 U. S. 446, 452."

Zahn v. Board of Public Works (1925), 274 U. S. 325, 328, 47 S. Ct. 594, 71 L. Ed. 1074.

It is submitted, therefore, that where reasonable minds cannot differ over whether there is an emergency, it is as fully a matter of judicial as of legislative finding that an emergency does or that one does not exist, but that if reasonable minds can differ in the matter, so that it is one of reasonable doubt, the finding of the legislature should be deemed conclusive. Where the legislative finding is in reason indisputedly right, as where it is fortified by judicial knowledge, the presumption in favor of the finding cannot by any possibility be overcome; where the finding is in reason indisputably wrong—clearly unreasonable or arbitrary—the presumption is automatically overthrown. Where in reason there is doubt whether the finding is right or wrong, whether well or ill founded, the presumption controls. The legislative finding that the real estate mortgage situation is an emergency situation is in reason indisputably right—judicial knowledge fortifies the presumption in favor of the finding; it is insuperable.

Principle applicable where legislative judgment is obviously erroneous: "The court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends on the truth of what is declared. *Block v. Hirsch,* 256 U. S. 154. *Chas. Wolff Packing Co. v. Court of Industrial Relations,* 262 U. S. 522, 536."

The Chastleton Corp. v. Sinclair, supra, (264, U. S. 543, 547).

The principle applicable where the legislative judgment is obviously correct, as where the legislative finding coincides with something that is a matter of judicial knowledge, may be stated thus: The court is not at liberty to shut its eyes to a legislative declaration of what is a generally known fact, whether or not the validity of a law demands on the truth of the declaration, but especially if the validity of a law so depends. If there were no emergency and it were generally known that none existed, but the legislature should declare the existence of one, the court would take notice of the obvious legislative mistake. Needless to say, the court may equally notice the truth of a legislative finding of the existence of an emergency when its existence is obvious.

Somewhat in point is *People v. La Fetra* (1921), 230 N. Y. 429, 130 N. E. 601, 604.

Principle applicable where there is doubt whether the legislative judgment is correct: "In determining the question as to the constitutionality of an act of the Legislature, we must remember that the Legislature is an independent part of our government. It is presumed to have had the Constitution in mind in passing the act. It is the exponent of the popular will, and its acts must be treated with respect, reconciled, and sustained if possible. A court is never justified in setting at naught the will of the Legislature, unless it is clearly repugnant to the Constitution. The rule laid down in *Fletcher v. Peck,* 6 Cranch 87, 128, 3 L. Ed. 162, is sound and salutary: 'The question, whether a law be void for its repugnancy to the constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case.'"

Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421, (recent case).

It is submitted, moreover, that "necessary," in such an expression as "necessary for the public welfare," has reference more to the situation or occasion from which the legislation springs than to whether the particular remedy is the only one or even the best one that could be supplied. Given the actual occasion or situation which reasonably, though not absolutely, involves a necessity for action, because of some actually existing or actually threatened public detriment or danger, *any* enactment, though the least reasonable or least desirable of a number of possible enactments that could, within reason, be regarded as designed to terminate or obviate the particular detriment or danger, is within the meaning of "necessary for the public welfare"—is legislation for a public "need."

> "The doctrine that the police power is a law of necessity may well be said to furnish the key to what is within and what is without the boundaries of such power; not that a police regulation to be legitimate must be an absolute essential to the public welfare, but that the exigency to be met must so concern such welfare as to suggest, reasonably, necessity for a legislative remedy."

State v. Redmon (1907), 134 Wis. 89, 114 N. W. 137, 126 Am. St. Rep. 1003, 14 L. R. A. N. S. 229, 15 Ann Cas. 408.

And see:

City of Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419, 6 A. L. R. 1584.

In most cases, the court is more concerned with the reasonable relation of the means to the end sought than with the necessity of adopting a means, because the necessity is always factual, but the means is always a law. Given the necessity, the law must be a *reasonable* means to the end. Can any one doubt that the statute involved in the case at

bar is a reasonable means to an end justifiably sought by the Minnesota legislature?

> "Exercise of the power is primarily though not conclusively for the legislature and so long as its exercise of the power bears reasonable relation to a legitimate purpose, the courts may not interfere."
>
> Third Dec. Dig., Constitutional Law, sec. 70 (3) (see p. 557).

And see *State v. Harper* (1923), 182 Wis. 148, 196 N. W. 451, 452-3, 33 A. L. R. 269.

> "* * * the validity of a police regulation, whether established directly by the State or by some public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose."
>
> *Chicago, Burlington & Quincy Ry. Co. v. People, supra,* (200 U. S. 561, 592).

> "It was said in *Purity Extract & Tonic Co. v. Lynch,* 226 U. S. 192, 204, 33 Sup. Ct. 44, 47, 57 L. Ed. 184, that, in examining a given statute relating to an appropriate subject of police regulation to determine whether its provisions are reasonable—
>
> 'The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat'."
>
> *State v. Bassett* (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 134.

Even as to the question whether the law, as a means, is reasonable, it would seem that the lawmaking branch of the government and not the court is the first judge, and that its judgment should not be overruled unless plainly, clearly,

palpably, and beyond a reasonable doubt, such judgment is wrong.

"* * * It is enough that we are not warranted in saying that legislation * * * has no reasonable relation to the relief sought. *Chicago, Burlington & Quincy R. R. Co. v. McGuire,* 219 U. S. 549, 569."

Block v. Hirsch, supra, (256 U. S. 135, 158).

And see:

City of Aurora v. Burns, 319 Ill. 84, 149 N. E. 784, 787.

G. "A large discretion is necessarily vested in the Legislature to determine, not only what the interests of public convenience and welfare require, but what measures are necessary to secure such interests. *Cotter v. Stoeckel,* 97 Conn. 244, 116 Atl. 248; *Young v. Lemeux,* 79 Conn. 440, 65 Atl. 436, 600, 20 L. R. A. (N. S.) 160, 129 Am. St. Rep. 193, 8 Ann. Cas. 452"

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

"While this power is subject to limitations in certain cases, there is a wide discretion on the part of the legislature in determining what is and what is not necessary —a discretion which courts ordinarily will not interfere with. The leading case upon this point is that of *Charles River Bridge v. Warren Bridge,* 11 Pet. 420, in which a franchise to maintain a ferry between Cambridge and Boston, under which a bridge was subsequently erected, was held to be subject to the power of the legislature to establish a parallel bridge between the same points. In *Stone v. Mississippi,* 101 U. S. 814, a charter to a lottery company for twenty-five years was held to be subject to the power of the State to abolish lotteries altogether. Similar cases announcing the same principle are *Boyd v. Alabama,* 94 U. S. 645; *Beer Company v. Massachusetts,* 97 U. S. 25; *Butchers' Union Co. v. Crescent City Co.,* 111 U. S. 746; *New Orleans*

Gas Co. v. Louisiana Light Co., 115 U. S. 650, 672; *Mugler v. Kansas*, 123 U. S. 623, 665; *Chicago & R. R. Co. v. Chicago*, 166 U. S. 226."

Manigault v. Springs (1905), 199 U. S. 473, 480, 26 S. Ct. 127, 50 L. Ed. 274.

II. "A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

Block v. Hirsch, supra, (256 U. S. 135, 157).

One of the reasons why Chapter 339, Laws of Minnesota of 1933, does not involve an arbitrary assumption of power, but a reasonable exercise of power possessed, is that by its own terms the act will expire on May 1, 1935. By that time there will have been another meeting of the Minnesota legislature. Thus there will have been a legislative opportunity to judge whether circumstances and conditions that now lie in the lap of the future shall make it necessary, for the public welfare, to extend the life of the act. Congress twice continued in effect the provisions of the emergency measures considered in *Block v. Hirsch, supra.*

See *The Chastleton Corp. v. Sinclair, supra,* (264 U. S. 543).

It would have been obviously unreasonable on the part of the Minnesota legislature to have provided in the act for the termination thereof before the legislature is of a certainty to convene again, and thus not to have forestalled the possibility that the act might go out of existence at a time when the extension of the period of redemption may, more than ever, be essential to the public welfare.

As *The Chastleton Corporation v. Sinclair* shows, measures passed to meet an emergency, and valid when passed, will continue valid as long as the emergency lasts, unless they

sooner expire by their own terms. No one knows how long the mortgage-situation emergency will last. That it is still with us admits of no more doubt than that it was with us when said Chapter 339 was passed.

> A law "depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed."
>
> *The Chastleton Corporation v. Sinclair, supra,* (264 U. S. 543, 547).

The quotation from *The Chastleton Corporation* case must not be taken too literally. No one knows just when the depression began; no one will ever be able to say just when it will have ended. Even after it may be said to be a thing of the past, innumerable readjustments must follow in its train. The owners of farms and homes, in order ultimately to save them, may need a post-depression period in which to adjust their affairs. If we could be sure beyond peradventure of a doubt that the depression will have become a thing of history *before* May 1, 1935, we would still maintain that the act does not unnecessarily extend the period of redemption.

> "'The power is not limited to victories in the field and dispersion of the (insurgent) forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress'."
>
> *Hamilton v. Kentucky Distilleries Co., supra,* (251 U. S. 146, 161).

I. It does not devolve upon appellees to show that the statute is constitutional, but upon appellant to show, if possible, that it is not.

12 C. J., Constitutional Law, sec. 221;
Third Dec. Dig., Constitutional Law, sec. 48 (see p. 473).

"* * * when a litigant comes into court to declare a particular statute null and void as being beyond the power of the Legislature to pass he must show precisely and conclusively that it is beyond such power."

People v. City Prison Warden, 286, 154 App. Div. 413, 139 N. Y. Supp. 277.

Recent cases in point:

Williams v. Mayor, 53 S. Ct. 431, 433;
Jefferson County v. Busby (Ala.), 148 So. 411; 413;
State v. Prevatt (Fla.), 148 So. 578, 579;
McPherson v. Fisher (Ore.), 23 Pac. (2d) 913.

Appellant, to prevail, must show that such an emergency as the act is intended to meet does not exist, else that, if the emergency exists, there is "no possible connection" (see *American Coal Mining Co. v. Special Coal and Food Commission of Indiana*, 268 Fed. 563)—we take this to mean no possible reasonable connection—between the emergency and the provisions of the act. Appellant can not attack the act on the ground that it is impolitic and unwise. Appellant can not attack the act on the ground that it is unnecessary, either in the sense that, the emergency existing, it might, and perhaps had better be, left to work itself out without legislative interference, or in the sense that the legislature might have found a different and perhaps better way of meeting the emergency—perhaps even a way that would not involve a conflict between legislation and the letter of the constitution. Appellant can not urge, because the court can not consider, the grounds in question. Granted that there is an emergency, and granted that the provisions of the statute are by any reasonable possibility such as tend to meet the emer-

gency, the court is bound to hold the act constitutional; the court is precluded from questioning the motive or the wisdom of the legislature or considering the necessity or the nonnecessity of the legislature's meeting the emergency in the particular way in which the legislature has met it by the particular act in question.

III.

The statute is not repugnant to the contract clause of Section 10 of Article 1 of the Constitution of the United States.

A. Constitutional inhibitions upon impairment of the obligation of contracts yield to considerations of general welfare. Under the police power, the obligation of contracts may be impaired, and the police power of the people of the state may prevail not only over the contract clause of the constitution of the state, but over the contract clause of the federal constitution also.

In an eminent domain case, citing police power cases, this court laid down the following proposition, with respect to a state's want of power to bind itself not to contravene the letter of the contract cause of the federal constitution:

> "There can be now, in view of the many decisions of this court on the subject, no room for challenging the general proposition that the States can not by virtue of the contract clause be held to have divested themselves by contract of the right to exert their governmental authority in matters which from their very nature so concern that authority that to restrain its exercise by contract would be a renunciation of power to legislate for the preservation of society or to secure the performance of essential governmental duties. *Beer Company v. Massachusetts*, 97 U. S. 25; *Stone v. Mississippi*, 101 U. S. 814; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746; *Douglas v. Kennedy*, 168 U. S. 488; *Manigault*

v. Springs, 199 U. S. 473; *Texas & New Orleans R. R. Co. v. Miller,* 221 U. S. 408."

Pennsylvania Hospital v. Philadelphia (1917), 245 U. S. 20, 23, 38 S. Ct. 35, 62 L. Ed. 124.

Certainly, if the state can not bind itself not to impair the obligation of its own contracts through the exercise of the police power, the state is doubly free, in the interests of general welfare, to exercise the power to impair the obligation of contracts between individuals, especially in a matter as to which the state has never even attempted to bind itself, by contract, not to interfere.

"Const. U. S., art. 1, Sec. 10, prohibiting impairment of obligations of contract, and due process and equal protection clauses of 14th amendment do not extend to subjects affecting general welfare of public."

Third Dec. Dig., Constitutional Law, sec. 117.

"The occasions to consider this subject in its bearings upon the clause of the Constitution of the United States which forbids the States passing any laws impairing the obligation of contracts has been frequent and varied; and it has been held without dissent that this clause does not so far remove from State control the rights and properties which depend for their existence or enforcement upon contracts, as to relieve them from the general regulations for the good government of the State and the protection of the rights of individuals as may be deemed important."

2 Cooley, Constitutional Limitations (8th ed.), p. 1237.

In *Union Dry Goods Co. v. Georgia Public Service Corp., supra,* (248 U. S 372, 377), Mr. Justice Clarke, in delivering the opinion of the court, said, after citing a number of the decisions of this court:

"These decisions, a few of many to like effect, should suffice to show the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the State, * * *."

B. "Contracts are made subject to the exercise of the police power of the state, when such exercise is otherwise justified."

Third Dec. Dig., Constitutional Law, sec. 117;
Recent case: *City of Butte v. Roberts* (Mont.), 23 Pac. (2d) 342.

"All contracts, whether made by the state itself, by municipal corporations, or by individuals, are subject to be interfered with, or otherwise affected by, subsequent statutes enacted in the bona fide exercise of the police power, and do not, by reason of the contracts clause of the constitution, enjoy any immunity from such legislation."

12 C. J., Constitutional Law, sec. 603.

"All contracts and all rights, it is declared, are subject to this power, and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as experience may demonstrate the necessity."

2 Cooley, Constitutional Limitations (8th ed.), p. 1237.

Contracts are inherently subject to the impairment of their obligation through the exercise of the police power; a contract is entered into subject to the possibility that it may have to yield in whole or in part to the exigencies of the public welfare.

Edgar A. Levy Leasing Co. v. Siegel, supra, (258 U. S. 242, 249).

In *Marcus Brown Holding Co. v. Feldman* (1921), 256 U. S. 170, 198, 41 S. Ct. 465, 65 L. Ed. 877, Mr. Justice Holmes, delivering the opinion of the court stated that

> "contracts are made subject to this exercise of the power of the state when otherwise justified, * * *. *Manigault v. Springs*, 199 U. S. 473, 480; *Louisville & Nashville R. R. Co. v. Mottley*, 219 U. S. 467, 482; *Chicago & Alton R. R. Co. v. Tranbargar*, 238 U. S. 67, 76, 77; *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372, 375; *Producers Transportation Co. v. Railroad Commission of California*, 251 U. S. 228, 232."

In *Atlantic Coast Line Rd. Co. v. Goldsboro, supra*, (232 U. S. 548, 558), Mr. Justice Pitney, in delivering the opinion of the court, said that

> "it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise. *Slaughterhouse Cases*, 16 Wall. 36, 62; *Munn v. Illinois*, 94 U. S. 113, 125; *Beer Co. v. Massachusetts*, 97 U. S. 25, 33; *Mugler v. Kansas*, 123 U. S. 623, 665; *Crowley v. Christenson*, 137 U. S. 86, 89; *New York, etc. R. R. Co. v. Bristol*, 151 U. S. 556, 567; *Texas, etc. R. R. Co. v. Miller*, 221 U. S. 408, 414, 415."

C. The reasons for the principles here set forth are stated as follows by Mr. Justice Brown, in *Manigault v. Springs, supra*, 199 U. S. 473, 480.

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal,

or are necessary for the general good of the public, though contracts previously entered into by individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign rights of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are, where parties enter into contracts, properly lawful at the time, to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the State, prohibiting an establishment or continuance of such traffic;—in other words, that parties by entering into contracts may not estop the legislature from enacting laws intended for the public good."

"This rule is not only reasonable but necessary, as a contrary rule would enable individuals, by their contracts, to deprive the state of its sovereign power to enact laws for the public welfare."

12 C. J., Constitutional Law, sec. 603.

"If contracts valid when made, covering a subject matter within the police power, are not subject to the subsequent exercise of that power on the part of the state it would place in the hands of individuals the power to withdraw from the state the right to subsequently exercise its police power."

Raymond Lumber Co. v. Raymond Light, etc., Co. (1916), 92 Wash. 330, 159 Pac. 133, 136, L. R. A. 1917 C, 574.

D. Much has been said and written about the sanctity of contract. Even if there were no contract clause in the constitution the law would undoubtedly hold the contractual obligation sacred. In general, it is for the public welfare to hold sacred the obligation of contracts, but contracts can not, under the pretense of sanctity, directly or indirectly defeat that welfare.

As has been pointed out, contracts are inherently subject

to the impairment of their obligation through the exercise of the police power. (See III B, this argument.) The sanctity of contracts is, necessarily, conditioned by the inherent susceptibility of contracts to yielding to the police power and the demands of general welfare.

The contract clause was not incorporated into the federal constitution because of the sanctity of contracts. There are other obligations as legally and morally binding as those of contract, and therefore as sacred, but it was not thought necessary to place them specifically under the aegis of the organic law. Instance the obligations incident to the marital statutes. It has been held that the contract clause, even, does not, itself, protect the obligation of certain quasi contracts.

Harmonson v. Wilson (1887), 1 Hughes 207, Fed. Cas. No. 6074 (11 Fed. Cas. 541, 549);
Morley v. Lake Shore Ry. Co. (1892), 146 U. S. 162, 13 S. Ct. 54, 36 L. Ed. 925;
Louisiana v. New Orleans (1883), 109 U. S. 285, 288, 3 S. Ct. 211, 27 L. Ed. 936;
Garrison v. City of New York (1871), 21 Wall. (88 U. S.) 196, 203.

It may well be considered an open question whether the contract clause was not more the result of repudiation of debts by financially embarrassed states, and the result of attempts by such states to replenish their empty treasuries at the expense of the obligation of contracts between individuals, than a result of regard for the sanctity of contract or a result of attempts by the states to favor the debtor class. If the clause was the result of attempts by the states to favor the debtor class, why was not the federal government inhibited from ever making like attempts? There was fear of what the federal government might do, as the first ten amendments to the federal constitution attest. Yet the federal government is free to impair the obligation of contracts.

Even if the contract clause was primarily the result of attempts by the states to favor the debtor class, the question arises whether, in a complex civilization such as now obtains, as contrasted with the comparatively simple civilization that obtained in 1789, the police power may not with justification reach out to affect matters with which it could not then justifiably have interfered. (See IH, this Argument.)

The fact that the contract clause was to protect the people of the several states from laws of a certain type does not limit to that type bills by which the obligation of contracts can not be impaired, but nevertheless makes it easier to yield the letter of the clause to the police power in a situation in which legislation, in impairing the obligation, does not impose a burden on the public and retard the public welfare, but removes a burden from the public and promotes that welfare.

E. If a sheriff's certificate of sale evidences a contract between him or the state and a purchaser at an execution sale, the obligation of that contract, like the obligation of any other contract, is secondary to the matter of public welfare, which is the primary concern of all law. It is difficult to see why, if the obligation evidenced by the certificate is within the meaning of "obligation of contracts" as used in the contract clause of the federal constitution, such contract is not as liable as any other to yield to considerations of general welfare. If between the sheriff or the state and such purchaser any contract arises which is within the purview of the contract clause, that contract is as inherently subject to the police power, and as susceptible to yielding to it, as is any other contract. And if the purchaser contracts that he will convey to a third person at the end of the statutory one-year redemption period, provided that before the end of the period the land shall not have been redeemed, the police

power, in the same behalf, may impair the contract between the foreclosure purchaser and the third person.

Whether the obligation of a contract can be impaired does not depend upon the subject matter of the contract, except as that subject matter may be related to considerations of general welfare. Nor can it depend upon what the precise relation between the parties to the contract may be, except as that relation may concern the welfare of the public.

F. Whether a legislative act validly impairs the obligation of contract does not depend upon whether the act alters the substantive or alters the adjective law pertaining to contract.

Can it make any difference whether a statute indirectly impairs the obligation of contracts or impairs it directly? The test of the valid exercise of the police power is not whether it acts directly or indirectly upon the obligation but whether and to what extent impairment of the obligation will promote the general welfare.

The contract clause does not in terms or by implication distinguish between direct and indirect impairment of a contractual obligation. Both direct and indirect are within its purview. Hence the letter of the clause may be either directly or indirectly contravened, in the interest of the public welfare.

Parties who enter into contracts can no more estop the legislature from directly than from indirectly impairing the obligation of contracts in a proper case by "enacting laws intended for the public good."

It would seem to be an *a priori* proposition that a power that can abrogate the very contract itself can change or destroy the remedy thereon, conceded always that the power does not exist and therefore can never be exercised, in any case in which the welfare of society as a whole is not endangered.

It seems that under the police power ordinary remedies (e. g., trial by jury) may be suspended.

Block v. Hirsch, supra, (256 U. S. 135, 158).

In *Chadwick v. Moore* (Pa., 1844), 8 Watts & Sergeant 49, a statute which stayed for one year the sale of property which, when first offered for sale by the sheriff, would not fetch at least two-thirds of its appraised value, was upheld, although no limit was placed upon the life of the statute. Said Gibson, C. J.:

> "Though unlimited in its duration, this statute was evidently produced by the emergency which arose from the collapse of the credit system; and taking from it the right to sell for two-thirds the value, reserved for the benefit of the creditor, it becomes an unconditional law to suspend the enforcement of the contract for a year. Is such an exercise of the sound discretion spoken of, so unreasonable as materially to impair the remedy, and amount to a denial of the right? To hold that a state Legislature is incompetent to relieve the public from the pressure of sudden distress by arresting a general sacrifice of property by the machinery of the law, would invalidate many statutes whose constitutionality has hitherto been unsuspected."

G. If under the police power the legislature can interfere with the remedy, the legislature can so interfer at any stage of the remedy. It would be anomalous if general welfare were the paramount consideration at one point but not at another.

In *Gault's Appeal* (1859), 33 Pa. 94, it was held that after judicial sale of property for nonpayment of taxes, the period to redeem could be increased from one year to two years, even though the purchaser's contract with the sheriff was impaired, as the power to tax included the power to impair the obligation of contracts, even to the point of obliterating them entirely.

The argument in *Gault's Appeal* is applicable in the case at bar, because the police power, like the power to tax, includes the power to impair the obligation of contracts, even to the point of wiping them out. The only difference between the power to tax and the police power, in that connection, lies in the fact that the latter can not override the contract clauses arbitrarily, but only in furtherance of the welfare of the public.

Whether, in the absence of public emergency, *Gault's Appeal* should be followed in all respects may be somewhat open to question. *Gault's Appeal* was not an emergency case; neither are the cases in which the courts have refused to follow it. Instance *Rott v. Steffen* (1921), 229 Mich. 241, 201, N. W. 227 (see 230). But it would seem that in a time of public emergency the police power is adequate, whether by way of reenforcing the taxing power or not, to wipe out the advantages of the purchaser or increase or prolong those of a person entitled to redeem the land from sale, if to do so will promote the general welfare.

H. In numerous cases concerning remedial provisions in their relation to constitutional inhibition against impairment of the obligation of contracts, there is hardly a syllable about police power or emergency legislation.

Farmers Co-operative Creamery v. Iowa State Ins. Co. (1900), 112 Iowa 608, 84 N. W. 904;
Shaffer v. Bolander (Iowa, 1854), 4 G. Gr. 201;
Burton v. Emerson, Shields & Co. (Iowa, 1854), 4 G. Gr. 393;
Correll v. Hull (1854), 4 G. Gr. 455;
Bradley v. Lighteap (1903), 195 U. S. 1, 24 S. Ct. 748, 49 L. Ed. 65;
Oshkosh Waterworks Co. v. Oshkosh (1903), 187 U. S. 437, 47 L. Ed. 249, 23 S. Ct. 234;
Daniels v. Teraney (1880), 102 U. S. 415, 26 L. Ed. 187, 2 Ky. Law Rep. 176;
Memphis v. U. S. (1877), 97 U. S. 293, 24 L. Ed. 920;

Edwards v. Kearzey (1877), 96 U. S. 595, 24 L. Ed. 793;
Von Hoffman v. Quincy (1866), 71 U. S. (4 Wall.) 535, 18 L. Ed. 403;
Gunn v. Berry (1872), 82 U. S. (15 Wall.) 610, 21 L. Ed. 212;
White v. Hart (1871), 80 U. S. (13 Wall.) 646, 20 L. Ed. 685;
Howard v. Bugbee (1860), 65 U. S. (24 How.) 461, 16 L. Ed. 753;
Green v. Biddle (1823), 21 U. S. (8 Wheat.) 1, 8, 5 L. Ed. 547;
Thornberg v. Jorgensen (1932), 60 F. (2d) 471;
Lamb v. Powder River Live Stock Co. (1904), 132 Fed. 434;
Smith v. Spillman (1918), 135 Ark. 279, 205 S. W. 107, 1 A. L. R. 136;
Robards v. Brown (1883), 40 Ark. 423;
Malone v. Roy (1901), 134 Cal. 344, 66 Pac. 313;
Thresher v. Atchison (1897), 117 Cal. 73, 48 Pac. 1020, 59 Am. St. Rep. 159;
State v. Bradshaw (1897), 39 Fla. 137, 22 So 296;
Hull v. State (1892), 29 Fla. 79, 11 So. 97, 16 L. R. A. 308, 30 Am. St. Rep. 95;
Wilder v. Campbell (1896), 4 Ida. 695, 43 Pac. 677;
Collins v. Collins (1880), 79 Ky. 88;
Phinney v. Phinney (1889), 81 Me. 450, 17 Atl. 405, 4 L. R. A. 348, 10 Am. St. Rep. 266;
Cargill v. Power (1850), 1 Mich. 369;
Bremen Mining, Etc., Co. v. Bremen (1905), 13 N. Mex. 111, 79 Pac. 806.

Barnitz v. Beverly (1895), 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93, is devoted to the proposition "that the laws which prescribe the mode of enforcing a contract, which are in existence when it is made, are so far a part of the contract that no changes in these laws which seriously interfere with that enforcement are valid, because they impair its obligation within the meaning of the constitution of the United States." But what of it? The police power can act

on those as well as on any other parts of the contract. An assumption that the statute discussed in the case was the result of the panic of 1893 would be gratuitious. The case makes no mention of any panic, depression or other crisis or emergency. At any rate, no consideration of the police power, in connection with the general welfare in the face of an emergency, or indeed in any connection whatever, entered into the decision of the case. If the statute *was* due to a panic, and if the decision *is* in point on the relation of the police power to the contract clause of the federal constitution, the case must yield to the authority of the later and now prevailing decisions of the United States Supreme Court.

Similar criticisms are in order with respect to the cases on which *Barnitz v. Beverly* relies, including the leading case of *Bronson v. Kinzie* (1843), 42 U. S. (1 How.), 311, 11 L. Ed. 143; also *McCracken v. Hayward* (1844), 43 U. S. (2 How.) 608, 11 L. Ed. 397; *Brine v. Insurance Co.* (1877), 96 U. S. 627, 24 L. Ed. 858; *Seibert v. Lewis* (1886), 122 U. S. 284, 76 S. Ct. 1190, 30 L. Ed. 1161; *Louisiana v. New Orleans* (1880), 102 U. S. 203.

It is not without reason that in a recent case, *Addiss v. Selig*, 264 N. Y. Supp. 816 (see top of 824), consideration of the police power is eliminated from an opinion in which *Bronson v. Kinzie, supra,* is discussed.

Connecticut Mutual Life Ins. Co. v. Cushman (1882), 108 U. S. 51, 2 S. Ct. 236, 27 L. Ed. 648, implies that a statute would impair the obligation of contract if it should "diminish the duty of the mortgagor to pay what he agreed to pay, or shorten the period of payment, or interfere with or take away any remedy which the mortgagee had, by existing law, for the enforcement of its contract." Admitted. Admitted, also, that such a statute, passed when normal conditions obtain, would be unconstitutional. But whether it would be

so if enacted under the police power in the face of an emergency is another question, upon which the case does not touch.

Conley v. Barton (1923), 260 U. S. 677, 43 S. Ct. 238, 67 L. Ed. 456, was a case which, involving a statute imposing a condition "easily complied with" (p. 681, official report), and a remedial change not "intimate in its relation" (id.) with the contract, was constitutional.

Hooker v. Burr (1904), 194 U. S. 415, 24 S. Ct. 706, 48 L. Ed. 1046. Whether a case falls on one side or the other of any such distinction as this case seems to make, is absolutely immaterial in connection with a consideration of the police power. The contracts of mortgagees and those of purchasers are alike inherently subject to the power. Under this power, the time of redemption can be extended against either the mortgagee or the purchaser, and any right of either affected in any way, for promotion of the general welfare in time of emergency.

Hollister v. Donahoe (1899), 11 S. Dak. 197, 78 N. W. 959, is not on its face a police-power or emergency-statute case. When normal conditions obtain, a legislature can no more impair the obligation of mortgage by extending the redemption period one year or even one week than by extending it five years, but to meet a public emergency the legislature can enlarge the period to any extent that may, within the bounds of reason, be deemed for the public good.

Rosier v. Hale (1860), 10 Iowa 470, speaks of an emergency but makes no allusion to the police power.

In *Maloney v. Fortune* (1860), 14 Iowa 417, there is no mention of the police power and counsel for appellant "do not ask us to listen to a suggestion from them in favor of their position" (see p. 420).

Whatever the reasoning behind these state decisions, they must, so far as they concern the contract clause of the fed-

eral constitution, yield to the principles announced in the recent decisions of this court.

The question with regard to the statute is not whether the remedy it affords impairs the obligation of contract, but whether its impairment of such obligation is repugnant to constitutional provisions. To be of value on the latter question, cases must concern the exercise of the police power, particularly the exercise thereof in the face of some detriment or threat to the public welfare. Moreover, although a case may stand for any proposition which may be reasonably deduced from an application of the decision of the case to the facts thereof, the omission, from the opinion in the case, of any mention of the proposition or any reason to sustain it, weakens the force of the proposition. The function of an opinion is to state the reasons for a decision.

IV.

The statute is not repugnant to the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. A significant thing about the power called the police power is, that we seldom refer to the power by that name or attempt to justify anything under it unless it is exercised in a way to deprive a person of something which he deems to be his under the aegis of the law. It would seem to be of the very essence of the police power that it may, in a proper case, for the sake of the general welfare, destroy or modify contracts, judgments, land or interests in land, chattels or interests therein, and rights of action, and act upon vested as well as upon contingent rights.

The letter of a due process clause, like that of a contract clause, yields to considerations of general welfare, and the police power of a state may override both the letter of the

due process clause of the constitution of the state and the letter of the due process clause of the federal constitution, nor does either the federal or the state constitution limit the subjects on which the state may exercise the power.

See 3 Words and Phrases, p. 2253.

Recent cases:

Chapman v. Boynton, 4 Fed. Supp. 43, 46, citing several decisions of the Supreme Court of the United States;

Graham v. Kingwell (Cal.), 24 Pac. (2d) 488, 489.

"Const. U. S. art 1, sec. 10, prohibiting impairment of obligations of contract, and due process and equal process and equal protection clauses of 14th amendment do not extend to subjects affecting general welfare of public."

Third Dec. Dig., Constitutional Law, sec. 253.

"The constitutional guaranties that no person shall be deprived of life, liberty or property without due process of law, do not limit, and were not intended to limit, the subjects on which the police power of a state may lawfully be exerted."

12 C. J., Constitutional Law, sec. 962, citing numerous United States Supreme Court and other decisions.

"* * * The legislative or police power is a dynamic agency, vague and undefined in its scope, which takes private property or limits its use when great public needs require, uncontrolled by the great constitutional requirement of due process. Either the rights of property and contract must when necessary yield to the public convenience, advantage, and welfare, or it must be found that the state has surrendered one of the attributes of sovereignty for which governments are founded, and made itself powerless to secure to its citizens the blessings of freedom and to promote the general welfare."

People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 605-6.

After citing *Block v. Hirsch* (1921), 256 U. S. 135, 41 S. Ct. 458, 16 A. L. R. 165 and certain cases therein cited (*Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527; *Welch v. Swasey*, 214 U. S. 91; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531; *St. Louis Poster Advertising Co. v. St. Louis*, 249 U. S. 269; *Perley v. North Carolina*, 249 U. S. 510), Mr. Justice Clarke, in *Edgar A. Levy Leasing Co. v. Siegel*, 258 U. S. 242, 247, says:

> "These authorities show that from time to time for a generation as occasion arose, this court has held that there is no such inherent difference in property in land, from that in tangible and intangible personal property, as exempts it from the operation of the police power in appropriate cases, * * *."

See also:

Marcus Brown Holding Co. v. Feldman, supra, 256 U. S. 170;

Union Dry Goods Co. v. Georgia Public Service Corp. supra, 248 U. S. 372;

Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558).

B. All property is held subject to the possibility that under the police power it may be affected in a manner contrary to the letter of the due process clause. Every contract or property right, whether vested or not, is inherently subject to the possibility.

Hubbell v. Higgins (1910), 148 Iowa 36, 126 N. W. 914, Ann. Cas. 1912, B 822;

Martin v. Blattner (1886), 68 Iowa 286, 289, 295, 25 N. W. 131, 133, 135, 27 N. W. 244.

Recent case: *City of Butte v. Roberts* (Mont.), 23 Pac. (2d) 342.

"These guaranties have never been construed as being incompatible with the principle, equally vital, because essential to peace and safety, that all property is held under the implied obligation that the owner's use of it shall not be injurious to the community."

12 C. J., Constitutional Law, sec. 962.

The police power "is subject to and part of government itself, and need not be expressly reserved, when it grants rights of property to individuals or corporate bodies, as they take subservient to that right."

Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 588).
See also *Mugler v. Kansas,* (1887), 123 U. S. 623, 8 S. Ct. 273, 31 L. Ed. 205.

Attention is called to the quotation, in III B of this Argument, from *Atlantic Coast Line Rd. Co. v Goldsboro.*

C. So far-reaching is the police power in its relation to the due process clause that notwithstanding this clause a person may, under the power, be deprived of property without compensation.

After citing several United States Supreme Court cases, Mr. Justice Holmes, in *Block v. Hirsch, supra,* (256 U. S. 135), says, at 156:

"These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation."

In *Atlantic Coast Line Rd. Co. v. Goldsboro, supra,* (232 U. S. 548), Mr. Justice Pitney, at 558, after citing cases to support the statement that all property rights are held subject to the police power, says:

"And the enforcement of uncompensated obedience

to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without compensation or without due process of law. *Chicago, Burlington & Quincy Railroad v. Chicago*, 166 U. S. 226, 255; *New Orleans Gas Co. v. Drainage Commissioners*, 197 U.S. 453, 462; *C. B. & Q. Ry. v. Drainage Commissioners*, 200 U. S. 561, 591, 592."

In *Hamilton v. Kentucky Distilleries Co., supra*, (251 U. S. 146), the court turned down the contention (see p. 115) that Congress could not, as a wartime measure, take property without compensation, saying (156) that in a proper case a state may, under the police power, take private property without compensation; and citing (middle of 157) *Mugler v. Kansas*, 123 U. S. 623, 668, *and Kidd v. Pearson*, 128 U. S. 1, 23.

See also *Edgar A. Levy Leasing Co. v. Siegel, supra*, (258 U. S. 242, 247).

D. Numerous cases concerning vested or property rights and due process clauses are neither police-power nor emergency-provision cases.

Norris v. Tripp (1900), 111 Iowa 115, 82 N. W. 610;
Brinton v. Seevers (1861), 12 Iowa 389;
Hoyt Metal Co. v. Atwood (1923), 289 Fed. 453;
Arnold & Murdock Co. v. Industrial Commission (1921), 314 Ill. 251, 145 N. E. 342;
Roche v. Waters, 72 Md. 24, 19 Atl. 235, 72 L. R. A. 533;
Gladney v. Sydnor (1903), 172 Mo. 318, 72 S. W. 554;
Crump v. Guyer (1916), 60 Okla. 222, 157 Pac. 321, 2 A. L. R. 331;
Tufts v. Tufts (1892), 8 Utah 142, 30 Pac. 309, 16 L. R. A. 482;
Strafford v. Sharon (1889), 61 Vt. 126, 17 Atl. 793, 18 Atl. 308, 4 L. R. A. 499 (police powers discussed in dissenting opinion in 18 Atl.);
Pinkum v. City of Eau Claire (1892), 81 Wis. 301, 51 N. W. 550.

In *Edworthy v. Iowa Savings & Loan Assn.* (1901), 114 Iowa 220, 225, 86 N. W. 315, the court expressly disclaimed that its decision rested upon a consideration of the police power; moreover, the case did not involve emergency legislation.

Bottdorf v. Lewis (1903), 121 Iowa 27, 95 N. W. 26, does not consider the due process clause in its relation to the police power. It is difficult to conceive how a statute assuming to modify existing dower rights could ever be sufficiently for the public interest to warrant upholding it in the face of the due process clauses, but if, conceivably, such a statute could sufficiently serve the purpose of general welfare, it would be constitutional.

E. In connection with the relation between the police power and due process, as well as in connection with the relation between that power and the impairment of the obligation of contracts or the denial of the equal protection of the laws, the degree to which legislation will promote general welfare must be weighed against the public effect of adhering to the letter of the organic law, and the question answered whether the legislation manifests a merely arbitrary attempt to supervene the letter.

> " 'The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat.' "
>
> *State v. Bassett* (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131, quoting *Purity Extract and Tonic Co. v. Lynch* (1912), 226 U. S. 192, 204, 33 S. Ct. 44, 57 L. Ed. 184.

F. Although the legislature could, under the police power, for the public benefit, deprive appellant and others of property without due process of law, the legislature has not deprived appellant of anything whatsoever without such process.

Perhaps no such definition of due process as can satisfy a scientifically accurate mind can ever be framed, but, generally speaking, the gist of due process in a given case is an opportunity, upon proper notice, to have one's day in court —a hearing—such notice and hearing to be according to laws applicable in all other like cases, and the laws as applied to the facts of such other cases to be applied likewise to the facts of the given case.

3 Words and Phrases, pp. 2352 and 2243;
2 Words and Phrases, (2d series), pp. 170 and 175;
3 Words and Phrases, (3d series), pp. 63 and 67;
1 Words and Phrases (4th series), pp. 813 and 815.

And see the following recent cases:

City of Coral Gables v. Certain Lands (Fla.), 149 So. 36, 37;
Winter v. Barrett (Ill.), 186 N. E. 113, 124.

But—

"* * * What would be due process of law if done under the police power or taxing power might not be, and in many cases would not be, if not done under either of these powers."

State v. Sponaugle, 45 W. Va. 415, 32 S. E. 283, 284, 43 L. R. A. 727.

And see:

3 Words and Phrases, p. 2227;
2 Words and Phrases (2d series), p. 167.

It can not be seriously argued that if the Minnesota statute deprives the appellant of property, the statute so deprives the appellant without a hearing upon proper notice, or that such notice and hearing have not been according to the laws applicable in other like cases coming within the purview of the statute, or that the courts have applied to the facts of the case at bar any other or different laws

than those courts apply to the facts of such other cases, or have applied those laws in any manner in which those courts do not apply them in all other cases like the one at bar.

G. A redemption law is "favorable to the rights of property."

Gault's Appeal (1859), 33 Pa. 94, 98

The law favors the redemption of property.

Caro v. Wollenberg (1913), 68 Ore. 420, 136 Pac. 866, 869.

"Redemption is the last chance of the citizen to recover his rights of property, and yet, it is here, at the point of the owner's extremity, the appellant's argument would have us apply strictness of construction to a statute made for the owner's relief."

Gault's Appeal, supra, (33 Pa. 94, 98).

Decisions contra the decision in *Gault's Appeal* do not necessarily imply dissent with the foregoing statement. *Rott v. Steffen* (1924), 229 Mich. 241, 201 N. W. 227 (see 230) and other nonemergency cases do not point directly to the statement and condemn it. Moreover, in the case at bar, in time of emergency, the statement may assume point and significance it may not possess is nonemergency times and cases. However, the statement may be true even in ordinary times. *Gault's Appeal* may be right, at least as far as the statement in question is concerned, and *Rott v. Steffen,* if it be deemed to challenge the statement, may be wrong.

Land having always been and still being a favorite subject in the eyes of the law, it follows that, if the law favors the redemption of property, the law particularly favors the redemption of land, and that the redemption of land, in the interest of the general welfare, is therefore an especially appropriate object of the exercise of the police power.

V.

The statute is not repugnant to the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. Let us suppose for a moment that the statute is an example of class legislation, contravening the letter of the equal protection clause of the federal constitution. If the letter of the contract clause and the letter of the due process clause must yield to the exigencies of general welfare, why should not the letter of the equal protection clause, also, yield to such exigencies? Then the statute, even if it is class legislation, is not unconstitutional. No reason can be given why the contract clause and the due process clause but not the equal protection clause shall yield the letter to the spirit of the organic law.

The police power *can* prevail over the equal protection clause.

> "The equal protection clause Const. U. S. Amend 14 does not take from the states power to classify in adoption of police laws, but permits wide discretion and avoids what is done only when it is without reasonable basis."
>
> Third Dec. Dig., Constitutional Law, sec. 212.

> "Const. U. S. art. 1, sec. 10, prohibiting impairment of obligation of contract, and due process and equal protection clauses of 14th amendment do not extend to subjects affecting general welfare of public."
>
> Third Dec. Dig., Constitutional Law, sec. 117.
> And see 12 C. J., Constitutional Law, sec. 894.

> "It is well understood that those provisions of the Constitution do not apply to laws enacted by a state Legislature in the exercise of its police power. *Powell*

v. Pennsylvania, 127 U. S. 678, 8 S. Ct. 992, 1257, 32 L. Ed. 253."

Fisher Flouring Mills Co. v. Brown (1924), 109 Wash. 680, 187 Pac. 399, 403, speaking of equal protection clauses and due process.

And see: *Barbier v. Connolly* (1884), 113 U. S. 27, 31.

If, conceivably, the general welfare, in time of emergency, could be more protected by class legislation, with consequent denial of equal protection, than by adherence to the mere letter of a clause, the legislation could be justified under the police power.

In this connection it is to be remembered that the statute was not enacted primarily for the benefit of certain mortgagors, but primarily for the benefit of society as a whole —not for the welfare of a class, but for the common, public, or general, welfare. It was passed to relieve society in its entirety from certain social, economic and political dangers incident to the predicament of numerous members of that society.

B. The statute is *not* class legislation.

There is neither unjust discrimination nor the denial of equal protection in a statute applicable to all alike who are in the same situation or the same natural classification.

Barbier v. Connolly, supra, (113 U. S. 27, 32).

Recent case: *Town of Green River v. Fuller Brush Co.,* 65 F (2d) 112, 114-5, citing several decisions of the Supreme Court of the United States.

Recent case: *State v. Darling* (Iowa), 246 N. W. 390.

What rights, privileges or immunities does the statute confer upon any citizen which it does not, *upon the same terms,* confer upon any other citizen? May not the rights, privileges or immunities obtainable under the statute be obtained by *all* citizens who are mortgagors such as the statute

describes?. Does it provide that some mortgagors of a certain description shall have certain rights, privileges or immunities that other mortgagors of the same description shall not have? Or that one class of persons (for example, females, adults or whites) shall have certain rights, privileges or immunities under the statute, but other classes of persons (for example, males, children or blacks) shall not?

No law can be framed that does not make, in a sense, a class of these qualified by the terms of the law to take advantage of it.

If the statute embraced an arbitrary classification of debtors, it would work a corresponding arbitrary discrimination among creditors, and deny to those discriminated against the equal protection of the laws. But the statute, embracing no such classification, works no such discrimination, nor does it operate against the appellant in any manner in which it does not or would not operate against any other creditor whose debtor's case is within the provisions of the act.

C. Reasonable classification has never been held unconstitutional. The courts have habitually trenched upon the letter of the equal protection clause—have habitually construed it in the light of the purpose of fundamental law and not according to the strict letter—by holding that it does not condemn reasonable classification.

> "When a statute is attacked for discrimination or unreasonable classification doubts are resolved in its favor and it is presumed that the Legislature acts from proper motives in classifying for legislative purposes, and its classification will not be disturbed unless it is manifestly arbitrary and involved."
>
> Third Dec. Dig., Constitutional Law, sec. 48 (see p. 474).

The equal protection clause does not prevent reasonable classification.

Recent case: *Little v. American State Bank* (Mich.), 249 N. W. 22, 23.

Classification, if reasonable, remains an exclusive legislative function.

Wayne Township v. Brown (Ind.), 186 N. E. 841, 850.

And if a state of facts can be reasonably conceived that will sustain the classification, the existence of such state of facts is assumed.

Recent case: *State v. Superior Court* (Wash.), 24 Pac. (2d) 87, 88.

The principles by which to determine whether a statute makes an arbitrary classification and thus offends against the equal-protection clause, have been stated thus:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Bachtel v. Wilson*, 204 U. S. 36, 41; *Louisville & Nashville R. R. Co. v. Melton*, 218 U. S. 36; *Ozan Lumber Co. v. Union County Bank*, 207 U. S. 251, 256; *Munn v. Illinois*, 94 U. S. 113, 132; *Henderson Bridge Co. v. Henderson City*, 173 U. S. 592, 615."

Lindsley v. Natural Carbonic Gas. Co. (1911), 220 U. S. 61, 78, 55 L. Ed. 369, 31 S. Ct. 337, Ann. Cas. 1912 C, 160.

D. If, in behalf of the general welfare, legislation touches a certain field, the legislation need not cover the whole field in order not to offend against the equal protection clause.

It is immaterial, on the question of the constitutionality of the statute here considered, that the Minnesota legislature has fallen far short of affording relief to all debtors or even to all property-owners whom the depression has affected or even, perhaps, to all mortgagors of land. It is obvious that if the constitutionality of an act designed for the relief of mortgages of real estate depended upon whether it relieved all such mortgagors in any and all circumstances, legislatures would act at great peril in passing any measure whatever whereby to promote the general welfare through relief of mortgagors of realty. And if such a measure were unconstitutional because it does not afford any relief to debtors other than those whose real estate is mortgaged as security for their debts, no law for the relief of debtors, short of a law providing a general moratorium, could be constitutional, because no legislature could draw the line, between constitutionality and unconstitutionality, anywhere between relief, entire or partial, to certain classes of debtors and all-inclusive relief to all debtors whomsoever. Debts and debtors may undoubtedly be classified in various reasonable ways. Moreover, it does not follow that because a given classification is reasonable a further classification—a second within the first (even a third within the second, a fourth within the third, and so on)—is unreasonable. For instance, if it is reasonable, in the public interest, to relieve all who have bound property as security for debts, it is not

unreasonable to distinguish between those who have thus bound realty and those who have thus bound personalty. If, further, it is reasonable to relieve all who have thus bound personal property, it may not be unreasonable to distinguish between those who have made pledges and those who have given chattel mortgages, or between those who, on the one hand, have mortgaged cattle and those who have bound other property, or those who have pledged stocks or bonds and those who have bound other things. Likewise, if it is reasonable to relieve all who may lose their interests in land because they owe for it or have put it up as security, it may not be unreasonable to distinguish between those who have mortgaged land and those who have bought it on conditional sale, between those whose lands are subject to mortgage lien and those whose lands are subject to judgment lien, or between those whose lands have been sold under foreclosure and those whose lands have been sold under general execution. The statute did not create these distinctions. They exist in the very nature of things, like the distinction between secured and unsecured debts, that between debtors who have been sued and those who have not, that between debtors who have become judgment debtors and those who have not, and that between the lien of a real estate mortgage and a lien of some other description, instance a mechanic's lien, the lien of a chattel mortgage or the lien of a general execution. These distinctions so exist in the very nature of our legal system that they can not be abolished without the very abolition of debts, liens and actions. In the face of these facts it can not be successfully contended that the statute is class legislation. As the cases above cited indicate, class legislation is legislation that favors or oppresses a class which it arbitrarily creates, else does not act uniformly or upon all alike who may be grouped together according to some natural and reasonable classification.

The mortgagors entitled to the benefit of the statute are reasonably and naturally (i. e., nonarbitrarily and in the nature of things) in a separate class, and upon all who belong to it the statute acts equally and uniformly. Even if the classification were arbitrary, and the operation of the statute unequal, the statute could not be condemned as unconstitutional if, in emergency, it were necessary to the public welfare.

> "* * * It is well settled that the legislature of a State may (in the absence of other controlling provisions) direct its police regulations against what it deems an existing evil, without covering the whole field of possible abuses. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 81; *Missouri Pac. Ry. Co. v. Mackey*, 127 U. S. 205. If the legislature finds that a particular instrument of trade war is being used against a policy which it deems wise to adopt, it may direct its legislation specifically and solely against that instrument. *Central Lumber Co. v. South Dakota, supra*, (226 U. S. 157) p. 160. If it finds that the instrument is used only under certain conditions, or by a particular class of concerns, it may limit its prohibition to the conditions and the concerns which it concludes alone menace what it deems the public welfare. * * *"
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> *Farmer and Merchants Bank v. Federal Reserve Bank* (1923), 262 U. S. 649, 661, 43 S. Ct. 651, 67 L. Ed. 1157, 30 A. L. R. 635.

And see:

City of New Orleans v. LeBlanc (1920), 139 La. 113, 71 so. 248;

State v. Winchell & Rosenthal (1920), 147 La. 781, 86 So. 181; (1922), 258 U. S. 605, 66 L. Ed. 786, S. Ct. 313 (writ of error dismissed);

West v. City of Asbury, 89 N. J. Law 402; 99 Atl. 190;

Hughes v. City of Detroit (1922), 217 Mich. 567, 187 N. W. 530;

Miller v. City of Niagara Falls (1924), 202 N. Y. Supp. 594, 207 App. Div. 798.

"That the legislature directs its police regulations against what it deems an existing evil, without covering the whole field of possible abuses, does not render its action obnoxious to the equal protection clause of the Federal Constitution; * * *."

2 Cooley, Constitutional Limitations (8th ed.), p. 1231.

"* * * regulation is not violative of the equal protection clause merely because it is not all-embracing. *Adams v. Milwaukee*, 228 U. S. 572, 57 L. Ed. 971, 33 S. Ct. 610; *Miller v. Wilson*, 236 U. S. 373, 384, 59 L. Ed. 628, 632, L. R. A. 1915 F, 829, 35 S. Ct. 342."

Zucht v. King (1922), 260 U. S. 174, 177, 43 S. Ct. 24, 67 L. Ed. 194.

E. A fact that may not be without some significance is, that in the many cases in which the constitutionality of legislation similar to that here involved has been drawn into question, the claim that such legislation impairs the obligation of contract has frequently been made, and likewise the claim that it denies due process of law, but seldom the claim that it denies the equal protection of the laws.

Cases like *State v. Loomis* (1893), 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789, and *Vanzant v. Waddel* (1829), 10 Tenn. (2 Yerg.) 259, in which emergency legislation is not involved or in which the police power receives little or no consideration, have little force in connection with the question whether Chapter 339, Laws of 1933 of Minnesota, is class legislation, denying to any person or persons the equal protection of the laws.

F. The legislature is the first judge of whether a classification is reasonable. The legislature has a wide discretion in the matter of classification.

Lindsley v. Natural Carbonic Gas Co., supra, (220 U. S. 61, 78).

Recent Case: *State v. Darling* (Iowa), 246 N. W. 390.

It has even been said that special legislation is permissible when "designed to meet a temporary emergency in a particular locality or in regard to a particular person, * * * ."

Platt v. Craig (1902), 66 Ohio St. 75, 63 N. E. 594, 596.

It would seem that where the legislature is striving to meet an emergency, the bounds of its discretion enlarge; the greater the emergency, the wider the discretion.

Respectfully submitted,

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